132-91

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~318~~. 51

THE KEYSTONE MANGANESE AND IRON COMPANY, APPELLANT,

vs.

MATT. MARTIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED AUGUST 10, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 313.

THE KEYSTONE MANGANESE AND IRON COMPANY, APPELLANT,

vs.

MATT. MARTIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 8, 1888.

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1 Be it remembered that on the 8th day of January, A. D. 1886, came into the office of the clerk of the circuit court of the United States for the eastern district of Ark., Matt Martin, by J. M. Moore, Esq., his solicitor, and filed therein his bill of complaint against Keystone Manganese and Iron Company; which bill of complaint is in the words & figures following, to wit:

United States Circuit Court, Eastern District of Arkansas. In Chancery.

MATT MARTIN *v.* KEYSTONE MANGANESE — IRON COMPANY.

Complainant represents that he is a citizen of the State of Tennessee; that the defendant is a corporation organized under
2 the laws of the State of Pennsylvania, with its domicile in said State.

That complainant, on the 27th day of June, 1853, was the owner and was in possession of the northwest ¼ — the northwest quarter of section three, in township fourteen north, range seven west, in Independence county, in said —, and on said day sold and conveyed said land to one Thomas C. Smith, reserving by a clause in said deed all the mineral and ore in and upon said land. A copy of said deed is herewith filed, marked "Exhibit A."

That ever since said conveyance complainant has been and he now is in the possession of the mineral and ore in and upon said land.

That there are large & valuable deposits of manganese
3 therein, and complainant represents that the defendant, about the — day of December, 1885, unlawfully entered upon said mineral deposits, and began to mine and remove therefrom the manganese therein, and, although notified and requested to desist therefrom, defendant persists in said trespasses, to the great injury, waste, and destruction of complainant's interest in said land; that defendant has already removed and carried away a large quantity of said ore, of the value of upward of five thousand dollars; that it is impracticable for complainant to keep any account of or to ascertain the quantity of ore removed by defendant.

That defendant threatens to continue said trespasses and will so do unless restrained therefrom, to the ruin and total destruc-
4 tion of complainant's interest in said land; that his remedy at law is inadequate by reason of the irreparable nature of the injury inflicted upon him as well as by reason of the fact that it is not practicable for him to establish the quantity of ore taken by the defendant in an action at law, and will require a great multiplicity of suits, owing to the continuous nature of the trespasses.

The premises considered, the complainant prays that the defendant be restrained and enjoyned from the commission of further trespasses during the pendancy of this proceeding; that an account be taken of the quantity and value of the ore taken by it from said land and defendant decreed to account to complainant therefor, and

upon the final hearing the defendant be perpetually enjoined from further trespassing as aforesaid upon the mineral and ore in said land, and for other and further relief as may seem meet.

J. W. BUTLER,
ROBERT NEALL, &
J. M. MOORE,
For Compl't.

Filed & writ issued January 8th, 1886.
RALPH L. GOODRICH, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 26th day of October, anno Domini one thousand eight hundred and eighty-five, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on February 1st, 1886, as follows:

MATT MARTIN
v.
KEYSTONE MANGANESE AND IRON COMPANY. } 798.

Comes the defendant, by Coleman & Young, Esq's, its solicitors, and files herein its answer; which answer is as follows:

Answer, &c.

United States Circuit Court, Eastern District of Arkansas. In Chancery.

MATT MARTIN, Plaintiff,

vs.

KEYSTONE MANGANESE & IRON COMPANY.

The Keystone Manganese & Iron Company, for answer to plaintiff's complaint, says:

I. That defendant admits that it is in possession of the tract of land described in plaintiff's complaint, together with all such deposits of mineral as may be embraced therein, and that said defendant is now actively engaged in mining and removing manganese ore therefrom, but defendant denies that it unlawfully entered upon said land or the mineral deposits embraced therein, as alleged in plaintiff's complaint.

II. Defendant says the plaintiff is not the owner of said tract of land, nor of any interest therein, so as to authorize the interference of a court of chancery in his behalf, but that said defendant is now

and was at the commencement of this action duly and legally
8 authorized to enter upon said tract of land and to mine and remove therefrom any and all manganese ore found therein, without interference from said plaintiff or any other person, and that said defendant obtained the said right in the following manner and under the several conveyances and contracts, to wit:

That the tract of land described in plaintiff's complaint, viz., the N. W. ¼ of the N. W. ¼ of section 3, in township 14 N., of range 7 W., in Independence county, in the State of Arkansas, after having been returned as delinquent for non-payment of the taxes for the years 1874 and 1875, by the collector of said county, the same was duly and regularly advertised, and on the 15th day — May, 1876, the said tract of land was offered for sale by the collector of said county, in accordance with the statutes in such cases made and pro-
9 vided, and at which sale Elisha Baxter bid and offered to pay the taxes, penalty, and costs remaining unpaid upon said tract of land for the whole of said tract, and, no person offering to pay the same for a less quantity thereof, the said tract of land was struck off to the said Elisha Baxter as provided by law.

And after the expiration of two years from the date of said sale, to wit, on the 17th day of December, 1878, no person having redeemed said land, as provided by law, the clerk of the circuit court and *ex officio* clerk of the county court of said county of Independence did execute, acknowledge, and deliver to the said Elisha Baxter a good and sufficient deed, thereby conveying to him, his heirs and assigns, all the right, title, and interest of all persons whomsoever
10 in and to said land.

A duly certified copy of said deed is herewith filed, marked Exhibit "A," and as read to be taken as part of this answer.

And that therefore, to wit, on the 14th day of December, 1878, said Elisha Baxter, by his special warranty deed, did grant, bargain, sell, and convey the said tract of land to one Frank P. Southard.

A duly certified copy of said deed is herewith filed, marked Exhibit " B," and asked to be taken as part of this answer.

And that thereafter, to wit, on the 17th day of December, 1881, the said Frank P. Southard, by his warranty deed, did grant, bargain, sell, and convey the said tract of land to one Thomas B. Padgett, his heirs and assigns.

11 A duly certified copy of said deed is herewith filed, marked Exhibit "C," and asked to be taken as part of this answer; and thereafter, to wit, on the 19 day of November, 1882, the said Thomas B. Padgett, by his deed, duly executed, acknowledged, and delivered, did grant, sell, and quitclaim the said tract of land unto one Robert R. Case, his heirs and assigns.

A duly certified copy of said deed is herewith filed, marked Exhibit " D," and asked to be taken as part of this answer.

And therefore, to wit, on the 9th day of November, 1881, the said Robert R. Case, by his deed, duly executed and acknowledged and delivered, did convey, remise, release, and forever quitclaim unto William Einstein and Lorenzo S. Lapham and their heir-
12 the undivided two-thirds part or portion of said tract of land.

A duly certified copy of said deed is herewith filed, marked Exhibit "E," and asked to be taken as part of this answer.

And thereafter, to wit, on the 7th day of April, 1885, the said Robert R. Case, William Einstein, and Lorenzo S. Lapham did enter into a written contract or lease with one P. E. Chapin, by which the said parties did grant, bargain, sell, convey, and make over into the said P. E. Chapin, his heirs and assigns, all the ore and minerals known as manganese, and all ores and minerals containing manganese in combination with other ore, and mineral containing iron in combination with other ore, and mineral that may be found in and upon the said tract of land, with the privilege to enter
13 upon said tract of land and to mine and remove any and all the ores mentioned in said contract from said tract of land for and during the term of twenty-seven years from the date thereof upon the terms and conditions therein agreed upon.

And thereafter, to wit, on the 30th day of October, 1885, the said P. E. Chapin, by his written endorsement made upon said written contract, did grant, assign, and set over unto said defendant, The Keystone Manganese and Iron Company, all the right, title, claim, and interest which he had held and owned in and to the minerals embraced in said tract of land under and by virtue of said
14 contract of lease from the said Einstein, Lapham, and Case to him.

A duly certified copy of said contract or lease, with the assignment thereon, is herewith filed, marked Exhibit F, and asked to be taken as part of this answer.

III. And, further —ing plaintiff's complaint, defendant says that said plaintiff ought not to be permitted to further prosecute his action, because defendant says that said land having been sold for taxes and more than two years having elapsed since his right to redeem the same, that his said action is barred by the special statute of limitation of two years.

IV. And, further answering plaintiff's complaint, defendant says that said plaintiff ought not to be permitted to further pros-
15 ecute his said action, because defendant says that more than seven years have elapsed since the accrual of plaintiff's cause of action and before the commencement of this suit, because said defendant and those under and through whom defendant holds said land and mineral interests have had and held upon notorious, adverse, and actual and continuous possession by inclosure and cultivation and mining of said land under claim of ownership for more than seven years next before the commencement of this action, and that at no time within and for more than seven years last past before the commencement of this action has defendant or any of those under and through whom it holds said land recognized said
16 plaintiff's claim to any right or interest whatever in said land, and defendant denies that plaintiff has continuously had and held possession of the ores and minerals in said land as alleged in said complaint.

Whereupon defendant, having fully answered *defendant*, prays to be discharged with his costs and other relief.

CLEMENT & YANCEY,
Att'ys for Def'ts.

EXHIBIT "A."

Deed. County Clerk to Elisha Baxter.

To all to whom these presents shall come, Greeting:

Know ye that whereas the following-described tracts of land, viz., south half of the southwest quarter of section two (2), township fourteen (14) north, range seven (7) west, 80 acres; northeast
17 quarter of northwest quarter of section two (2), township fourteen (14) north, range seven (7) west, $53\frac{26}{100}$ acres; south half of the southeast quarter of section two (2), township fourteen (14) north, range seven (7) west, 80 acres; northwest quarter of northwest quarter of section three (3), township fourteen (14) north, range seven (7) west, $51\frac{94}{100}$ acres, containing in the aggregate two hundred & sixty-five and $1\frac{21}{100}$ acres, lying and being in the county of Independence, in the State of Arkansas, were, among other lands, seperately listed and assessed for taxation in said county in the name of R. A. Childres, adm'r, agreeably to the laws of said State regulating the assessment and collection of taxes therein; and whereas neither the said owner thereof nor any other person or persons having paid the State, county, and other
18 taxes due thereon within the time prescribed by law, amounting to the ag-regate sum of twenty-seven dollars and twenty-four cents for the year- 1874 and 1875, being as follows: On south half of the southwest quarter of section two (2), township fourteen (14) north, range seven (7) west, the sum of twelve & $\frac{32}{100}$ dollars; northeast quarter of the northwest quarter of section two (2), township fourteen (14) north, range seven (7) west, the sum of four & $\frac{8}{100}$ dollars; south half of the southeast quarter section two (2), township fourteen (14) north, range seven (7) west, the sum of six & $\frac{16}{100}$ dollars; northwest quarter of the northwest quarter of section three (3), township fourteen (14) north, range seven (7) west, the sum of four & $\frac{68}{100}$ dollars: Therefore the clerk of the circuit court
19 and *ex officio* clerk of the county court in and for said county of Independence did advertise, amongst other lands, a list of the foregoing-described lands in the "North Arkansas Times," a newspaper published in the county of Independence and State aforesaid, having a *bona fide* circulation in said county, for the time and in the manner prescribed by law, as appears from a copy of said paper on file in my office, and attached a notice thereto that the whole of said tract of said land and said list contained, or so much thereof as should be necessary to pay taxes, penalty, and costs charged thereon, would be sold at the court-house, in said county of Independence, on the 15 day of May, 1876; and on the said 15th day of May, 1876, the said taxes, penalty, and costs on said tracts of

20 land still remaining unpaid, John Bailey, collector of the county of Independence, did proceed to offer for sale at public auction, at the court-house door of the said county of Independence, the foregoing-described tract of land in seperate parcels or so much thereof as would be sufficient to pay the taxes, penalty, and costs, respectively, due thereon; whereupon Elisha Baxter bid and offered to pay the taxes, penalty, and costs due on south half of southwest quarter of section two (2), township fourteen (14) north, range seven (7) west, the sum of fifteen and $\frac{25}{100}$ dollars for the whole thereof; and on the northeast quarter of northwest quarter of section two (2), township fourteen (14) north, range seven (7) west, the sum of five and $\frac{39}{100}$ dollars for the whole thereof; and on the south half
21 of the southeast quarter of section two (2), township fourteen (14) north, range seven (7) west, the sum of seven and $\frac{87}{100}$ dollars for the whole thereof; and on the northwest quarter of the northwest quarter of section three (3), township fourteen (14) north, range seven (7) west, the — of six and $\frac{11}{100}$ dollars for the whole thereof; and, no person appearing to pay the taxes on said tract of land for less quantities thereof, the said several parts of said tracts of land were struck off and sold to said Elisha Baxter for the said several sums aforesaid, which several sums, making the aggregate sum of thirty-four dollars and sixty-two cents, were then and there paid to said collector by the said Elisha Baxter; and the said Elisha Baxter, having produced to me, Edward M. Dickinson, clerk
22 of the circuit court and *ex officio* clerk of the county court in and for the county of Independence aforesaid, the certificate granted by the clerk of the county court of the county aforesaid at the time of the purchase of said land to the said Elisha Baxter, and the said Elisha Baxter requiring of me a deed for the same:

Now, know ye, that I, Edward M. Dickinson, as clerk of the circuit court and *ex officio* clerk of the county court within and for the county of Independence aforesaid, by virtue of the authority in me vested by law and in consideration of the said sum of thirty-four dollars and sixty-two cents so received by the collector as aforesaid, do by these presents grant, bargain, and sell unto the said Elisha Baxter, his heirs and assigns, the above and foregoing de-
23 scribed tracts or parcels of land so sold as aforesaid, "to wit:" South half of southwest quarter of section two (2), township fourteen (14) north, range seven (7) west, eighty (80) acres; northeast quarter of the northwest quarter of section two (2), township fourteen (14) north, range seven (7) west, 53.26 acres; south half of the southeast quarter of section two (2), township fourteen (14) north, range seven (7) west, 80 acres; northwest quarter of the northwest quarter of section three (3), township fourteen (14) north, range seven (7) west, 51.94 acres; hereby granting and conveying to the said Elisha Baxter, his heirs and assigns, all the right, title, and interest of the said R. A. Childress, adm'r, and every other person whomsoever in the same, together with the hereditaments
24 belonging; to have and to hold the said tracts of land to the said Elisha Baxter, his heirs and assigns, forever, as fully and absolutely as I, the said Edward M. Dickinson, as clerk as aforesaid,

and under the authority aforesaid, might, could, or ought to sell & convey the same.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of my office on the 17th day of December, 1878.

[L. S.] EDWARD M. DICKINSON,
Clerk of the Circuit Court and ex Officio Clerk of the County Court of the County of Independence, State of Arkansas.

STATE OF ARKANSAS, *County of Independence:*

On this 17th day of December, 1878, before me, Edward
25 R. McGuire, a justice of the peace within and for the county of Independence and State of Arkansas, appeared in person Edward M. Dickinson, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor, and stated that he had, as clerk of the circuit court and *ex officio* clerk of the county court of the county aforesaid, executed said deed for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In testimony whereof I have hereunto set my hand as such justice of the peace, in the county of Independence, on the 17th day of December, 1878.

E. R. McGUIRE, *J. P.*

The foregoing instrument of writing was filed for record in my office on the 17th day of December, A. D. 1878,
26 ED. M. DICKINSON,
Clerk & ex Officio Recorder,
By M. A. WYCOUGH, *D. C.*

STATE OF ARKANSAS, *County of Independence:*

I, Edward M. Dickinson, clerk of the county court and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the above and foregoing transcript is a full, true, and complete copy of a deed of conveyance made by Edward M. Dickinson, as clerk of the circuit court and *ex officio* clerk of the county court for said county of Independence, to Elisha Baxter, as the same appears on the records in my office in Book D, No. 2, pages 556, 557, 558, & 559, of Deeds.

In testimony whereof I have hereunto set my hand and
27 affixed the seal of said court on this 16th day of January, A. D. 1886.

[L. S.] ED. M. DICKINSON, *Clerk,*
By JOHN DICKINSON, *D. C.*

"EXHIBIT B."

Deed. E. Baxter to Frank P. Southard.

Know all men by these presents that I, Elisha Baxter, of the county of Independence, in the State of Arkansas, for and in con-

sideration of one hundred dollars, to me in hand paid by Frank P. Southard, of the county and State aforesaid, the receipt of which is hereby duly acknowledged, do by these presents grant, bargain, sell, and convey unto the said Frank P. Southard the following-described lots or parcels of real estate, situate, lying, and being in the county of Independence, in the State aforesaid, to wit: The south half of the southwest quarter of section two and the northwest quar-
28 ter of the northwest quarter of section three, all in township fourteen north, range seven west; to have and to hold unto the said Frank O. Southard, his heirs and assigns, forever; and I, the said Elisha Baxter, covenant to and with the said Southard and his heirs and assigns to warrant and defend the title to the above-described premises from the claims of all persons through or under me.

In testimony whereof I, the said Elisha Baxter, have hereunto set my hand and affixed my seal on the 14th day of Dec'r, 1878.

ELISHA BAXTER. [SEAL.]
HARRIET N. BAXTER.

STATE OF ARKANSAS, *County of Independence:*

On this the 14th day of December, A. D. 1878, before me, a duly qualified justice of the peace within and for the county and
29 State aforesaid, — Elisha Baxter, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as one of the parties grantor, and acknowledged that he had executed the same for the uses, consideration, and purposes therein mentioned and set forth, and desired me to so certify, which is accordingly done; and I further certify that on this day voluntarily appeared before me Harriet N., to me well known to be the wife of Elisha Baxter, and, in the absence of her said husband, acknowledged that she had executed the foregoing deed of conveyance in relinquishment of her dower of her own free will for the consideration, uses, & purposes therein mentioned and set forth without compensation or undue influence of her husband,
30 and desired me so to certify, which is accordingly done.

In testimony whereof I have hereunto set my hand and official signature on the 14th day of Dec'r, 1878.

E. R. McGUIRE, *J. P.*

The foregoing instrument of writing was filed for record in my office on the 13th day of April, A. D. 1880.

Attest: ED. M. DICKINSON,
Clerk & ex Officio Recorder,
By M. A. WYCOUGH, *D. C.*

STATE OF ARKANSAS, *County of Independence:*

I, Edward M. Dickinson, clerk of the circuit court and *ex officio* recorder within and for the county of Independence, in the State of Arkansas, do hereby certify that the above and foregoing
31 transcript contains a full, true, and complete copy of the deed executed by Elisha Baxter and Harriet N. Baxter, his wife,

to Frank P. Southard, as the same appears of record in my office in Book H, No. 2, on pages 245, 246, and 247, of the Record of Deeds.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of said court, at my office, in the town of Batesville, in the county and State aforesaid, on this 16th day of January, A. D. 1886.

[L. S.] ED. M. DICKINSON, *Clerk.*

"EXHIBIT C."

Deed. Frank P. Southard and Wife to Thomas B. Padgett.

Know all men by these presents that Franklin P. Southard
32 and Nebraska B. Southard, his wife, of Independence county and State of Arkansas, for and in consideration of the sum of three hundred dollars, to me in hand paid by Thomas B. Padgett, of the county of Independence and State of Arkansas, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said Thomas B. Padgett, his heirs and assigns, forever the following-described tract or parcel of land, lying in the county of Independence and State of Arkansas, to wit: The northwest quarter of the northwest quarter of section three (3), in township fourteen (14) north, of range seven (7) west, containing (54) fifty-four acres, more or less; to have and to hold unto the said Thomas B. Padgett and unto his heirs and assigns forever, with all the appurtenances thereto belonging.

33 And we, Franklin P. Southard and Nebraska B. Southard, hereby covenant with the said Thomas B. Padgett that we will forever warrant and defend the title to said land against all lawful claims whatever, and I, Nebraska B. Southard, wife *wife* of the said Franklin P. Southard, for and in consideration of the said sum of money, do hereby release and relinquish unto the said Thomas B. Padgett all my right or possibility of dower in and to the above-described parcel of land.

Witness our hands and seals this 17th day of December, 1881.

F. P. SOUTHARD. [SEAL.]

her
NEBRASKA B. x SOUTHARD. [SEAL.]
mark.

Attest: SAM'L PEETE.

STATE OF ARKANSAS, *County of Independence:*

34 On this the 17th day of December, A. D. 1881, before Sam'l Peete, an acting justice of the peace within and for the county of Independence, in the State of Arkansas, appeared in person Franklin P. Southard, to me personally well known as the person whose name appears upon the within & foregoing deed of conveyance as one of the parties grantors therein, and stated that he had executed the same for the consideration and purposes therein men-

tioned and set forth, and I do hereby so certify; and I further certify that on this day voluntarily appeared before me Nebraska B. Southard, wife of the said Franklin P. Southard, and to me well known to be the person whose name appears upon the within deed of conveyance, and, in the absence of her said husband, declared to me that she had of her own free will signed the relinquish-
35 ment of dower therein expressed for the purposes therein contained and set forth without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand as such justice of the peace, in the county of Independence, on the 17th day of December, 1881.

SAM'L PEETE, *J. P.*

The foregoing instrument of writing was filed for record in my office on the 17th day of December, 1881.

Attest: ED. M. DICKINSON,
Clerk & ex Officio Recorder,
By JOHN W. DICKINSON, *D. C.*

STATE OF ARKANSAS, *County of Independence:*

I, Edward M. Dickson, clerk of the circuit court and *ex officio* recorder within and for the county of Independence, in the
36 State of Arkansas, do hereby certify that the above and foregoing transcript contains a full, true, and complete copy of the deed executed by Franklin P. Southard and Nebraska B. Southard, his wife, to Thomas B. Padgett, as the same appears of record in my office in Book J, No. 2, on pages 64 and 65, of the Record of Deeds.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of said court, at my office, in the town of Batesville, in the county and State aforesaid, on this 16th day of January, A. D. 1886.

[L. S.] ED. M. DICKINSON, *Clerk.*

"EXHIBIT D."

Deed. Thomas B. Padgett and Wife to Robert R. Case.

37 Know all men by these presents that we, Thomas B. Padgett and Martha E. Padgett, his wife, for and in consideration of the sum of three hundred dollars to us in hand paid by Robert R. Case, do hereby grant, sell, and quitclaim unto the said Robert R. Case the following lands, lying in the county of Independence and State of Arkansas, to wit: The northwest quarter of the northwest quarter of section (3) three, in township (14) fourteen north, of range (7) seven west:

To have and to hold the same unto the said Robert R. Case and unto his heirs and assigns forever, together with all the appurtenances thereto belonging.

And I, Martha E. Padgett, wife of the said Thomas B. Padgett, for and in consideration of the said sum of money, do hereby
38 release and relinquish unto the said Robert R. Case all my right of dower in and to said lands.

Witness our hands and seals this — day of ——, 188–.

THOS. B. PADGETT. [SEAL.]
MARTHA E. PADGETT. [SEAL.]

STATE OF ARKANSAS, } ss:
County of Independence, }

Be it remembered that on this day came before the undersigned, as county clerk within and for the county aforesaid, duly commissioned and acting, Thomas B. Padgett, to me well known as the same person whose name appears upon the within and foregoing deed as one of the parties grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me the said Martha E. Padgett, wife of the said Thomas B. Padgett,
39 to me well known, and, in the absence of her said husband, declared that she had of her own free will signed and sealed the relinquishment of dower in the foregoing deed for the purposes therein contained and set forth without compulsion or undue influence of her said husband.

Witness my hand and seal, as such county clerk, this 19th day of November, 1882.

[SEAL.] M. A. WYCOUGH, *Clerk.*

The foregoing instrument of writing was filed for record in my office on the 18th day of November, 1882.

Attest: ED. M. DICKINSON,
Clerk & ex Officio Recorder,
By JOHN H. DICKINSON, *D. C.*

STATE OF ARKANSAS, *County of Independence:*

40 I, Edward M. Dickinson, clerk of the circuit court and *ex officio* recorder within and for the county of Independence, in the State of Arkansas, do hereby certify that the above and foregoing transcript contains a full, true, and complete copy of the deed executed by Thomas B. Padgett and Martha E. Padgett, his wife, to Robert R. Case, as the same appears of record in my office in Book J No. 2 of Deeds on pages 549 and 550.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of said court, at my office, in the town of Batesville, in the county and State aforesaid, on this 16th day of January, 1886.

[L. S.] ED. M. DICKINSON, *Clerk.*

41 "EXHIBIT E."

Deed. Robert R. Case to William Einstein and L. S. Lapham.

Know all men by these presents that I, Robert R. Case, of Batesville, in the county of Independence, for and in consideration of ten dollars to me in hand paid by William Einstein and Lorenzo S. Lapham, of the city of St. Louis and State of Missouri, the receipt whereof is hereby acknowledged, do hereby convey, remise, release, and forever quitclaim unto the said William Einstein and Lorenzo S. Lapham and their heirs the undivided two-thirds part, one portion, of the following-described tracts and parcels of land lying and being in the county of Independence, to wit:

No. 1. The northeast — of the southwest quarter and the
42 southeast — of the northwest quarter of section four (4), in township fourteen (14) north, of range seven (7) west.

2. The east half of the northwest quarter and the northwest quarter of the northeast quarter of the northeast quarter of section eleven (11), township fourteen (14), range eight west.

3. And south half of the northwest quarter of southeast quarter of section seven (7), township fourteen (14), range six (6) west.

4. And part of southwest quarter of section two (2), township fourteen (14), range eight (8) west.

5. And southwest quarter of the southeast quarter and the northwest quarter of the southeast quarter and the southwest quarter of the northeast quarter and the northeast quarter of the southwest quarter, in section eleven (11), township fourteen (14), range eight (8).

9. And the northwest quarter of the northwest quarter
43 of section four (4), township fourteen (14) north, range seven (7) west; N. E. ¼ of the N. E. ¼ of sec. 5, T. — N., R. 7 west.

10. And the southeast quarter of the southeast quarter of section thirty-one (31), township fifteen (15), range *range* six (6) west, and the west half of the southwest quarter of section thirty-two (32), township fifteen (15), range six (6) west.

11. And south half of southeast quarter of section twelve (12), township fourteen (14), range seven (7) west; the northwest quarter of the northeast quarter; part of the northeast quarter of the northeast quarter of section thirteen, township fourteen, range seven (7) west.

12. And northwest quarter of the northwest quarter of section three (3), township fourteen (14), range seven (7) west; the
44 west half of the north half of the northeast quarter of section twenty-nine (29), township fifteen (15), range six (6) west; the east half of E. ½ of the north half of the northwest quarter; the east half of the south half — northwest quarter *the* of the northwest part of the west half of the south half of the northeast quarter of section (29) twenty-nine, township fifteen, range six (6) west; the west half of the N. E. ¼ of the northwest quarter of section twenty-nine, township fifteen, range six west.

13. And the northwest quarter of the southeast quarter of section four, township fourteen, range (7) seven.

16. And the *and the* southeast quarter of the southeast quarter of section three (3), in township fourteen north, range eight (8) west.

19. And the north half of the southeast quarter of section
45 two (2), township (14) fourteen (*14*) north, range 8, with the undivided two-thirds interest, privileges, and appurtenances thereto belonging, as well upon that portion of said lands to which he holds merely a mineral right as to that which the owners in fee—that is to say, the intention of this deed is to carry one undivided two-thirds of said lands and mineral rights to the said Einstein & Lapham, viz., one undivided one-third to William Einstein and one undivided one-third to Lorenso S. Lapham, reserving an undivided one-third to himself; to have and to hold the above-released premises to the said William Einstein and L. S. Lapham and their heirs, to them and their use and behoofe forever.

46 And I, the said Robert R. Case, for myself and my heirs, executors, and administrators, do covenant with the said William Einstein & L. S. Lapham, their heirs and assigns, that the premises are free from all encumbrances made or suffered by me, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said William Einstein and L. S. Lapham, their heirs and assigns, forever against the lawful claims and demands of all persons claiming by, through, or under me, but against no other.

ROB'T. R. CASE.
ELLA A. CASE.

STATE OF ARKANSAS, }
County of Independence, } *ss:*

Be it remembered that on this day came before the undersigned, a notary public within and for the county aforesaid, duly
47 commissioned and acting, Robert R. Case, to me well known as the grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me Ella A. Case, wife of the said Robert R. Case, to me well known, and, in the absence of her said husband, declared that she had of her own free will signed and sealed the relinquishment of dower in the foregoing deed for the purposes therein mentioned, contained, and set forth without compulsion or undue influence of her said husband.

Witness my hand and seal as such notary public on this the 9th day of November, 1881.

48 [SEAL.] J. C. YANCEY,
Notary Public.

The following instrument of writing was filed for record in my office on the 9th day of November, 1881.

Attest: ED. M. DICKINSON,
Clerk & ex Officio Recorder,
By JOHN H. DICKINSON, *D. C.*

STATE OF ARKANSAS, *County of Independence:*

I, Edward M. Dickinson, clerk of the circuit court and *ex officio* recorder of Independence county and State of Arkansas, do hereby certify that the above and foregoing transcript contains a full, true, and complete — of the deed executed by Robert R. Case & wife to William Einstein and L. S. Lapham, as the same appears of
49 record in my office in Book I No. 2, on pages 617, 618, and 619, of the Record of Deeds.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of said court, at my office, in the town of Batesville, in the county and State aforesaid, on this 22 day of January, A. D. 1886.

[L. S.] ED. M. DICKINSON, *Clerk.*

"EXHIBIT F."

Contract or Lease. Robert R. Case, L. S. Lapham, and William Einstein to P. E. Chapin.

This indenture, made and entered into this 7th day of April, 1885, at Batesville, in the county of Independence and State of Arkansas, by and between Robert R. Case, of Independence aforesaid;
50 L. S. Lapham, and William Einstein, of the city of St. Louis and State of Missouri, of the first part, and P. E. Chapin, of the county of Cambria and State of Pennsylvania, of the second part, witnesseth:

That whereas the said parties of the first part own certain mineral rights and interests in and upon certain lots or parcels of land situated, lying, and being in the counties of Independence & Izard, in said State of Arkansas, and described as follows in Schedule "A:"

Schedule "A," containing a description of lands in which said first parties hold a mining deed, to wit, being the N. E. of the S. W. and the S. E. of the N. W. of sect. 4, town. 14 N., range 7 W., containing 80 acres, more or less, as conveyed by Thomas B.
51 Padgett and wife to R. R. Case, dated M'ch 30, 1881, and recorded in the recorder's office of Independence county, Book "J" No. 2, pages 227 and 228; also the E. ½ — N. W. ¼ and the N. W. ¼ of N. E. ¼ sect. 11, town. 14, range 8 W., as conveyed by David Green and wife to R. R. Case by deed of M'ch 17th, 1881, and recorded in said recorder's office in Book "J" No. 2, pages 176 & 177, said tract containing 120 acres, more or less; also the S. ½ of the N. W. ¼, the N. W. ¼ of S. E. ¼ of sec. 7, town. 14, range 6 W., containing 120 acres, more or less, and recorded in said office in Book "J" No. 2, pages 374, 375, & 376; also part S. W. ¼ of S. W. ¼ of sect. 2, town. 14, range 8 W., containing 20 acres, and the N. W. ¼ of the N. W. ¼ sect. 11, town. 14, range 8 W., containing 40 acres, more
52 or less, conveyed by deed dated April 28th, 1881, by Mary Jane Hawkins, Sarah Tate, James Hawkins, Henry Hawkins, & Edward Tate, and recorded in said office in Book "J" No. 2, pages 423 & 424; also all the cultivated land on the S. W. ¼ of S. E. ¼ and

the N. W. ¼ of the S. E. ¼ and S. W. ¼ of N. E. ¼ and the N. E. ¼ of the S. W. ¼, all in sect. 11, town. 14, range 8 W., which or any portion of which being occupied and used for mining purposes, twelve dollars ($12.00) per acre is to be paid by the person occupying or using, or his grantee or assigns, the same being recorded in said office in Book "J" No. 2, pages 171 & 172, conveyed by S. W. George and wife to R. R. Case by deed dated Feb'y 9th, 1881; also the N. W. f'l ¼ of S. E. f'l ¼ sect. 10, the S. W. ¼ of N. W. ¼ sect. 2, the
53 S. E. f'l ¼ of the N. W. f'l ¼ sect. 10, the N. W. f'l ¼ of the N. E. fr. ¼ sect. 10, the N. E. fr. ¼ sec. 3, N. E. ¼ of S. E. ¼ of sect. 3, the N. W. ¼ of S E. ¼ sect. 3, the S. W. ¼ of the S. E. ¼ sect. 3, the N. ½ of the S. W. ¼ sect. 3, the S. E. ¼ of S. W. ¼ sect. 3, lot 1 of the N. E. ¼ sect. 3, the S. W. ¼ of N. E. ¼ sect. 10, the N. E. ¼ of N. W. ¼ sect. 10, all in town. 14, R. 8 W., continuing 520 acres, more or less, conveyed by James Tate and wife by deed dated May 18th, 1880, and recorded in the recorder's office of Izard county, in said State of Arkansas, in Book "K," pages 9 & 10.

Also lot 2 of N. W. ¼ sect. 3, lot 2 of N. E. ¼ sect. 3, part N. E. ¼ sect. 9, the S. E. ¼ sect. 9, S. W. ¼ of S. W. ¼ sect. 10, all in town. 14, R. 8 W., containing 440.17 acres, conveyed by deed dated May 26th, 1881, by R. P. Williamson and wife to R. R. Case,
54 and recorded in said office, in Izard county aforesaid, in Book "K," pages 276 and 277; also the S. E. ¼ of S. W. ¼ sect. 5, part. S. W. ¼ of S. E. ¼ sect. 5, the S. W. fr. ¼ sect. 6, the S. ½ of S. E. fr. ¼ sect. 6, part N. W. fr. ¼ of sect. 8, part N. E. ¼ sect. 7, all in town. 14, R. 8 W., containing in aggregate 235.22 acres, more or less, conveyed by deed dated May 20, *the* 1881, by R. P. Williamson and wife to R. R. Case, and recorded in the office aforesaid, in Izard county, in Book "K," pages 277 & 278. The deeds above stated as being recorded in Izard county describe lands which lie in that county; also the N. W. ¼ of the N. W. ¼ sect. 4, the N. E. ¼ of N. E. ¼ sect. 5, in town. 14, R. 7 W., containing 110 acres, conveyed by deed dated March 18, 1881, by J. T. Rogers and wife to R. R. Case, and recorded
55 in the recorder's office of said county of Independence, in Book "J" No. 2, pages 177 & 178; also the S. E. ¼ of the S. E. ¼ sect. 31, the W. ½ of S. W. ¼ sect. 32, all in towns. 15, R. 6 W., containing 120 acres, conveyed by Richard Baxter and wife to R. R. Case by deed dated April 22nd, 1881, and recorded in said office, in Independence county, in Book "J" No. 2, pages 376 & 377; also the S. ½ of S. E. ¼ sect. 12, the N. W. ¼ of N. E. ¼, and part of N. E. ¼ of N. E. ¼ sect. 13, town. 14, R. 7 W., containing in the ag-regate 130 acres, conveyed by William Marshal and wife to R. R. Case by deed dated April 23rd, 1881, and recorded in said office in Book "J" No. 2, pages 306 & 307; also the N. W. ¼ of N. W. ¼ sect. 3, town. 14, R. 7 W., and W. ½ of N. ½ of N. E. ¼ sect. 29, and
56 E. ½ of E. ½ of N. ½ of N. W. ¼ and E. ½ of E. ½ of S. ½ of N. W. ¼ and N. W. part of W. ½ of S. ½ of N. E. ¼ and W. ½ of N. E. ¼ of N. W. ¼, all in sect. 29, town. 15, R. 6 W., conveyed by Polk D. Southard and wife to R. R. Case by deed dated the 18th of

March, 1881, and recorded in Book "J" No. 2, pages 174 & 175, in said office of Independence county; also the N. W. ¼ of S. E. ¼ of sect. 4, town. 14, R. 7 W., containing 40 acres, conveyed by Jesse Southern and wife to R. R. Case by deed dated March 15th, 1881, and recorded in Book "J" No. 2, pages 172, 173, & 174; also the W. ½ of S. E. ¼ and S. W. ¼ sect. 33, town. 14, R. 6 W., and N. W. ¼ sect. 4, town. 13, R. 6 W., containing 400 acres, conveyed by Am. C. Byers to R. R. Case by deed dated May 21, 1881, and recorded in said Book "J" No. 2, pages 349 & 350; also N. ½
57 of N. E. ¼ sect. 34 and N. W. ¼ of S. E. ¼ sect. 34, E. ½ of N. W. ¼ sect. 34, and E. ½ of S. E. ¼ of sect. 34 and S. ½ of N. E. ¼ sect. 34 and west ½ of N. W. ¼ sect. 35, all in town. 14, R. 6 W., and containing 440 acres, conveyed by William Meacham and wife to L. S. Lapham, William Einstein, and R. R. Case by deed dated May 20, 1881, and recorded in Book "J" No. 2, pages 347 & 348; said deeds are taken by grantee herein with such conditions as they may contain and subject thereto, they all being mining deeds.

Also the following, fee of which is in the grantors, to wit: The S. E. ¼ of S. E. ¼ sect. 3, town. 14, R. 8 W., containing 46.18 acres, conveyed by United States receiver's certificate No. 858, bearing date July 26th, 1881, to R. R. Case.

58 Also the S. ½ of S. W. ¼ and S. W. ¼ of S. E. ¼ of sect. 34, town. 14 N., R. 6 W., containing 120 acres, conveyed by Thomas B. Padgett and wife to William Einstein, Lorenzo S. Lapham, and R. R. Case by deed dated May 21, 1881, and recorded in Book "J" No. 2, pages 334 & 335, and E. ½ of S. E. ¼ sect. 33, town. 14, R. 6 W., containing 80 acres, conveyed by Oliver B. Coson and wife to Lorenzo S. Lapham, William Einstein, and R. R. Case by deed dated May 21, 1881, and recorded in said Book "J" No. 2, pages 350 & 351. All of the said lands described as being recorded in Book "J" No. 2 lie in said county of Independence; also the following land *land*, in said county of Independence, held by mining deed and taken as the other of like character, to wit,
59 the W. ½ of S. E. ¼ sect. 2, town. 14, R. 8 W., containing 80 acres, conveyed by John W. Causley and wife to R. R. Case by deed duly recorded in Book "H" No. 2, pages 606 & 607, in the recorder's office of said county of *of* Independence.

And whereas the said Chapin is desirous of obtaining the mineral lease thereof for the term of twenty-seven (27) years from the date hereof for the purpose of mining and manufacturing the ore and mineral therein contained: Therefore, for and in consideration of one dollar, each to the other in hand paid, the receipt of which is hereby acknowledged, and also in consideration of the other covenants and agreements hereinafter contained on the part of parties hereto, their agreement witnesseth:

60 That the said parties of the first part do hereby agree and bind themselves, their heirs, administrators, and assigns, and do hereby grant, bargain, sell, convey, and make over unto said P. E. Chapin, his heirs and *and* assigns, all the ore or mineral known as manganese, and all the ores and minerals containing manganese

in combination with other ore, and mineral containing iron in combination with other ore, and minerals that may be found in or upon the aforesaid described premises during the term of twenty-seven (27) years from the date hereof, subject, however, to all conditions and stipulations contained in said mineral conveyances to said Case, Lapham, and Einstein, or either of them, which said conditions and stipulations are hereby assumed by
61 & 62 said P. E. Chapin, his heirs and assigns, with the exclusion right and privilege to enter upon the said premises or any time hereafter within said term to dig and mine for the same and to take out and remove, ship, have, sell, and dispose of all ore of manganese and iron combined with other ore or minerals found in or upon the said premises during the said term of twenty-seven (27) years from the date hereof, together with the right of ingress and egress to and from the mines, the water privileges, the necessary timber for mining purposes (so far as it does not conflict with the rights over which the parties of the first part have no control), the right to erect furnaces and works for manufacturing
63 the ore or minerals, the right to build railroads across and upon the lands, the right to such buildings for the accommodation of hands, the right of removing said works, including all machinery placed on said premises, together with said railroads, buildings, tools, and all improvements, upon termination of their agreement, contract, or lease, and also jointly and severally agree that in the event of said parties of the first part or either of them *because* legally possessed of a certain property known as the Martin property, on and near Laffarty's Creek, in said counties of Independence and Izard, and to which the said Case now holds a tax title, *and that* the said Martin property shall be included in
64 their lease or contract and shall be subject to all the terms and conditions herein named.

That the said P. E. Chapin does hereby agree and bind himself, his heirs and assigns, to faithfully pay unto the said party of the first part, their heirs and assigns, a royalty of twenty-five cents per ton for each and every ton of 2,350 lbs. of manganese ore he shall mine and ship or *or* caused to be mined and shipped or manufactured, and a royalty of 10 cents per ton for each and every ton of 2,350 lbs. of iron ore that may be mined and shipped or manufactured during the continuance of this agreement, contract, or lease, and agree- to make quarterly payments for all royalty due;
65 and — that during each and every year during the term of this lease, should the royalty on the ore mined and shipped or manufactured not equal or fall short of the sum of five thousand dollars ($5,000.00), to pay unto the said party of the first part, their heirs and assigns, the said sum of five thousand dollars ($5,000.00) in quarterly installments of twelve hundred & fifty — ($1,250.00) each, on the 7th day of July, October, January, and April of each and every year during the continuance of this agreement, contract, or lease, in lieu of said royalty for each and every year such production may fall short of the stipulated sum of five thousand dollars ($5,000.00).

66 It is hereby further agreed by and between the parties hereto that all ore mined and shipped or manufactured, taken from the property herein described, where iron ore predominates, containing less than ten per cent. of metallic manganese shall constitute iron ore and shall pay a royalty of ten cents for each and every ton of 2,350 lbs., and all ore containing less than twenty per cent. and more than ten, 10, per cent. of metallic manganese shall constitute manganiferous ore and shall pay a royalty of fifteen (15) cents per ton for each and every ton of 2,350 lbs., and all ore *ore* containing twenty (20) per cent. and over of metallic manganese shall constitute manganese ore and shall pay a royalty of twenty-five,
67 25, cents for each and every ton of 2,350 lbs. so mined or manufactured and shipped.

It is further agreed by and between the parties hereto that should the said P. E. Chapin, his heirs or assigns, fail to comply with the terms and conditions herein contained relating to payment of quarterly royalties for a longer period at any one time than thirty (30) days that this agreement shall thereupon become null and void and all the rights and privileges herein contained shall cease and be determined, and that the respective parties hereto shall not thereafter be held liable for the non-fulfillment of any of the terms and conditions herein other than those accruing prior to such default,
68 and that the said Chapin, his heirs and assigns, shall have the right to *disclose* their contract null and void, should he or they at any time hereafter become satisfied that the working of the mines, ore, or minerals is unprofitable, by notifying any or all of the parties by letter; but the said parties of the first part shall not have the right to terminate this contract other than as herein provided.

It is also further agreed that all payments accruing to said parties of the first part under this contract shall be made at the Chemical National Bank, in New York city, or in some other bank in said city, as the parties hereto may agree, to the credit of the respective parties of the first part, their heirs, or assigns, one-
69 third each, and that the said parties of the first part shall — the rights of monthly inspection of the scales and shipping books of said Chapin, his heirs or assigns, for the purposes of ascertaining the amount of ore shipped, mined, or manufactured.

The intention of the said Chapin being to lease of said parties of the first part for a term of years all the lands owned or controlled by them or either of them on the 9th day of November, 1881 (but not any such lands acquired by said parties of the first part or either of them after said 9th day of November, 1881), containing manganese or iron ore in Independence county as aforesaid and adjoining counties, and said first parties being advised that
70 said Chapin would not so lease unless he could thereby control all such lands or minerals held or owned by said parties of the first part on said 9th day of November, 1881, it is therefore understood and agreed, in consideration of the premises, that should it hereafter appear that there are any such lands or mineral rights that were owned or controlled as aforesaid by said first parties or either of them on such 9th day of November, 1881, and not herein

described, that they and each of them shall, by future lease, be conveyed to said Chapin, his heirs or assigns, and any and all such lands and mining rights, and that said Chapin shall hold and use the same upon the same conditions and stipulations as are
71 herein made in regard to the lands herein described, nor is there to be any further payment or agreement than is hereby stipulated and agreed upon.

It is hereby further agreed that should said P. E. Chapin assign this lease to a corporation or association to be formed hereafter, then said parties of the first part agree that they will accept such assignee or assignees as their tenants and release said party of the second part from all personal liability on his covenante in said lease from the time when said assignment is made.

In witness of all of which we have hereto signed our names and affixed our seals in duplicate the year and date first written.

L. S. LAPHAM. [SEAL.]
WM. EINSTEIN. [SEAL.]
ROB'T R. CASE. [SEAL.]
P. E. CHAPIN. [SEAL.]

72 Signed and sealed in the presence of—
EDW. F. PATRICK.
JOHN W. GILBREATH.

Witness signature of Robert R. Case:
SAMUEL PEETE.
W. A. W. YEOUGH.

Witness signature P. E. Chapin:
JAS. M. SWANK, JR.
CYRUS ELDER.

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this 21st day of September, A. D. 1885, before me, a notary public in and for the city and State aforesaid, duly qualified for a term expiring June 28th, 1889, personally appeared L. S. Lapham and *and* William Einstein, to me known to be the same person described in and who executed the foregoing instrument, and
73 acknowledged that they executed the same as their free act and deed.

In testimony whereof I have hereunto set my hand and official seal, at my office, in St. Louis, this 21st day of September, A. D. 1885.

[SEAL.] C. C. LOGAN,
Notary Public, City of St. Louis, State of Missouri.

STATE OF ARKANSAS, *County of Independence:*

On this 23rd day of September, 1885, before me, Edward M. Dickinson, clerk of the circuit court within & for the county of Independence and State of Arkansas, appeared in person Robert R.

Case, to me personally well known as the person whose name
74 appears upon the within and foregoing lease, and stated that he had executed the same for the consideration & purposes therein mentioned and set forth, & desired the same so certified, which is accordingly done.

In testimony whereof I have hereunto set my hand as such clerk of the circuit court and affixed the seal of said court, at my office, in the town of Batesville, in the county and State aforesaid, on the 23rd day of September, 1885.

[SEAL.] ED. M. DICKINSON, *Clerk.*

STATE OF PENNSYLVANIA, } ss:
County of Cambria, }

On this 1st day of October, A. D. 1885, before me, a notary
75 public in and for the county and State aforesaid, duly qualified for a term expiring 17th May, 1886, personally appeared P. E. Chapin, to me known as the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In testimony whereof I have hereunto set my hand and seal, at Jalintown, the 1st day of October, A. D. 1885.

[SEAL.] A. MONTGOMERY,
Notary Public.

Know all men by these presents that I, the above-named P. E. C. Chapin, for & in consideration of the sum of one dollar and certain other good and valuable considerations to me in hand paid
76 by the Keystone Manganese & Iron Company, a corporation of the State of Pennsylvania, at and before the ensealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, assigned, and set over, and by these presents do grant, assign, and set over, unto said Keystone Manganese & Iron Company, its successors and assigns, the within indenture of lease and all those mess-ages, mines, minerals, mining rights and other rights described therein, with the appurtenances, and also all my estate, right, title, term of years yet to come, claim, and demand whatsoever of, into, or out of the same; to have and to hold the said mess-ages, mines, minerals, mining rights and other rights and appurtenances unto the said Keystone Manganese and Iron
77 Company, its successors and assigns, for the residue of the term within mentioned, under the rents and covenants within reserved and contained on my part and behalf to be done, kept, & performed.

In witness whereof I have hereunto set my hand and seal this 30th day of October, A. D. 1885.

P. E. CHAPIN. [L. S.]

Signed, sealed, and delivered in the presence of—
CYREN ELDER.
JAS. M. SWANK, JR.

STATE OF PENNSYLVANIA, } ss:
County of Cambria, }

On this 30th day of October, A. D. 1885, before me, a notary public in and for the county and State aforesaid, duly qualified for a term expiring 17th May, 1886, personally appeared P. E.
78 Chapin, to me known as the person described in and who executed the foregoing instrument, and acknowledged *and acknowledged* that he executed — as his free act and deed.

In testimony whereof I have hereunto set my hand and official seal, at Johnstown, this 30th day of October, A. D. 1885.

[SEAL.] A. MONTGOMERY,
Notary Public.

The foregoing instrument of writing was filed for record in my office on the 3rd day of November, 1885.

Attest: ED. M. DICKINSON,
Clerk & ex Officio Recorder,
By JOHN H. DICKINSON, *D. C.*

STATE OF ARKANSAS, *County of Independence:*

79 I, Edward M. Dickinson, clerk of the circuit court and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the above and foregoing transcript is a full, true, and complete copy of a lease or contract made by Robert R. Case, L. S. Lapham, and William Einstein with P. E. Chapin, as the same appears on the record in my office in Book "N" No. 2, pages 283, 284, 285, 286, 287, 288, 289, and 290, of Deeds.

In testimony whereof I have hereunto set my hand and affixed the seal of my office on this 18th day of January, 1886.

[L. S.] ED. M. DICKINSON, *Clerk,*
By JOHN DICKINSON, *D. C.*

Filed Feb'y 1, 1886.

RALPH L. GOODRICH, *Clerk.*

80 And on March 1st, 1886, as follows:

MATT MARTIN }
v. } 798.
KEYSTONE MANGANESE CO. }

Comes the complainant, by J. W. Butler, Robert Neel, & J. M. Moore, Esqs., his solicitors, and files herein his replication to the answer; which replication is as follows:

United States Circuit Court, Eastern District of Arkansas. In Chancery.

MATT MARTIN *v.* KEYSTONE MANGANESE CO.

Complainant, waiving exceptions for the many errors and insuffi-

ciencies in said answer contained, for replication thereto says
81 that the matters and things contained in his bill *is* true, and that the matters contained in said answer material to be answered *is* not true, and this he will maintain & prove, &c.

J. W. BUTLER,
ROB'T NULL,
J. M. MOORE, *Sol's.*

Filed March 1st, 1886.

RALPH L. GOODRICH, *Clerk.*

82 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On June 29th the following decree:

Decree.

MATT MARTIN
v.
THE KEYSTONE MANGANESE AND IRON COMPANY. } 798.

Comes the complainant, by Robert Null and J. M. Moore, his solicitors, and the defendant, by U. M. & G. B. Rose and Coleman & Yancey, its solicitors, and the said cause coming on to be heard was submitted on the bill, answer, and replication and the exhibits and depositions on file in said cause; and thereupon it is ordered and decreed that the defendant be, and it is hereby, perpetually restrained and enjoined from entering upon or removing the mineral or
83 any part thereof from the northwest ¼ of the northwest ¼ of section three, in township 14 north, range seven west, in Independence county; and it is further ordered that an account be taken of the quantity and value of the mineral and ore heretofore removed by the defendant from said land, and that defendant account to the complainant for the value thereof, and C. B. Moore is hereby appointed a master for the purpose of taking said account; and it is ordered that he hear evidence as to the quantity and value of said mineral and ore, upon the application of either of the parties to the cause, and ascertain and report the same to the court on or before the first day of the next October term; and the said defendant, by the said solicitors, prays an appeal to the Supreme
84 Court, and, it appearing that the value of the property in controversy is over five thousand dollars, said appeal is granted.

And on July 5th, 1886, as follows:

MATT MARTIN
v.
KEYSTONE MANGANESE AND IRON COMPANY. } 798.

Now on this day comes the defendant, by U. M. & G. B. Rose, Esqs., its solicitors, and files here its supersedeas bond in the sum of twenty-five hundred dollars, signed by Robert R. Case and Joe S. Wood as sureties, which bond is approved by the court, and it is ordered that the execution of the decree herein be stayed pending said appeal, and that both parties, pending said appeal, be enjoined
85 from digging minerals on the lands in controversy and from committing waste on it. This supersedeas is not to stay the taking of the account as provided in the decree; which supersedeas is as follows:

Know all men by these presents that we, The Keystone Manganese & Iron Company, as principal, and Robert R. Case and Joe S. Wood, as sureties, are held and firmly bound unto Matt Martin in the sum of twenty-five hundred dollars, to be void on conditions that whereas in a certain cause pending in the United States circuit court for the eastern district of Arkansas, in chancery, wherein said Matt Martin was plaintiff and said Keystone Manganese & Iron Company was defendant, a final decree was rendered, at the April
86 term of said court in the year 1886, in favor of said plaintiff and against said defendant; and whereas said defendant has prayed an appeal from said decree to the Supreme Court of the United States: Now, if said Keystone Manganese & Iron Company shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ROB'T R. CASE.
JOE S. WOOD.

Approved:

—— ——.

STATE OF ARKANSAS,
County of Independence, } 88:

Rob't R. Case & Joe Woods on this day came before me, a notary public of said county, and made oath that they are severally the owners of property exempt from execution, after paying all
87 just debts, of the value of five thousand dollars.

Sworn and subscribed before me this day. Witness my hand and seal of office on this 2nd day of July, 1886.

[SEAL.] CHAS. T. ARNETT, JR.,
Notary Public.

My seal lost in fire.

(Endorsed:) The within bond is taken and approved and is to operate as a supersedeas. Henry C. Caldwell, judge. July 5th, 1886. Filed July 5th, 1886. Ralph L. Goodrich, clerk; by W. P. Field, D. C.

88 The following opinion was rendered:

MATT MARTIN

vs.

KEYSTONE MANGANESE & IRON CO.

CALDWELL, *J.:*

On the 27th day of June, 1853, the plaintiff was the owner of the northwest ¼ of the northwest quarter of sec. 3, township 14 N., R. 7 west, and other lands, which he on that day sold & conveyed to Thomas C. Smith by a deed of conveyance which contained the following condition or reservation: "Subject only to this condition—that I, my heirs, representatives, and assigns, are to have, and I do hereby retain for myself and them, a perpetual and unlimited right in fee to all the stones and materials that may be in or upon
89 said lands, & full and unquestioned power & right to enter said lands for the purpose of digging, quarrying, and mining upon said lands, with full power & right of ingress and egress thereto and therefrom, and upon said lands to remain and erect said buildings thereon and to use such timber and other materials as may be convenient and proper for the excavation, preservation, manufacture, and removal of such stones & minerals and improvements as may be connected with the working of said stones and minerals, it being well understood by the parties hereto that the right of sa*i*l & all else is hereby conveyed to said Thomas C. Smith except the right to the stones & minerals on said lands, which, with all needful & proper rights and privileges to obtain, prepare
90 for market, and remove the same, are expressly reserved from sale."

An act of the Legislature of this State, passed in 1873 and in force when the assessment of 1874 was made, provides that "where the fee of the soil in any tract, parcel, or lot of land is in any person or persons, natural or artificial, and the right to any mineral therein in another or others, the same shall be valued and listed, agreeably to such ownership, in seperate entries and taxed to the parties owning the same, respectively." (Sec. 5675, Mansfield's Digest.)

The statute contains these further provisions:

"Each assessor shall * * * make out and deliver to the county clerk a return in tabular form, contained in a book to be furnished him by such county clerk, of the amount, description, and value of the real property subject to be listed for taxation in his county * * *."

91 "It shall be the duty of each assessor to make out from such sources of information as shall be in his power a correct & pertinent description of each tract and lot of real property in his county; and when he shall deem it necessary to obtain an accurate description of any seperate tract or lot in his county, he may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession; and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish

a satisfactory description of such parcel of real property to such assessor, he may employ a competent surveyor to make out a description of the boundaries and location thereof and a statement of the quantity of land therein, and the expense of such survey shall be returned
92 by such assessor to the county clerk, who shall add the same to the tax assessed upon such real property, and it shall be collected by the collector of the county with such tax, and when collected shall be paid on demand to the person to whom the same is due; and he shall in all cases, from actual view and from the best sources of information within his reach, determine as near as practicable the true value of each separate tract and lot of real property in his county, according to the rules prescribed by this act of valuing property; and he shall note in his plat book seperately the value of all houses, mills, and other buildings, which shall be carried out as a part of the value of such tracts. He shall enter on his plat book the number of acres of arable or plow land and the number of acres of wood or uncultivated land in each tract."
93 Sections 5116 & 5117, Gautt's Digest.

Notwithstanding the seperate ownership of the soil of this land and the mineral mines in it and the provisions of the statute requiring a separate assessment of the soil & the mineral in such cases, the forty acres in controversy was as*s*essed for the year 1874 in the name of the estate owning the soil, & there was no assessment of the mine. The land was sold at tax sale for the taxes of that year, and the defendant holds whatever title passed to the purchaser under the tax sale, and relies on that & the statute of limitations of two and seven years.

By the terms of the deed from Martin to Smith the former retained the title to mines and mineral in the land, with the necessary easements to make the same available, and the latter be-
94 came the owner of the soil or surface, subject only to the easements mentioned. The estate of each of them was an inheritable estate in land. They were not tenants in common. The two estates were as seperate and distinct as if they had been seperate parcels of real estate divided according to Government survey.

And the statute is mandatory in its requirement that "when the fee of the soil is — one person and the minerals therein in another the same shall be valued and listed, agreeably to such ownership, in seperate entries and taxed to the parties owning the same, respectively."

There never was any assessment of the mineral in this land, as required by the statute, and hence there could be no sale of the same for taxes.

95 The deed showing the two seperate estates was on record long before the assessment of 1874 & the sale for the taxes of that year. It was as much the duty of the assessor to assess seperately the soil of the land and the mineral in it as if they had been seperate & distinct parcels of land belonging to different persons, and the failure to assess the mineral in the land is as fatal to the tax title as it would be to a tax title to land which had never been assessed.

It is said that under sec. 5066, Gaunt's Digest, it was the plaintiff's duty to assess the mine or list it for assessment.

It was the duty of the assessor to assess it whether listed by the owner or not, and this duty was independent of any obligation imposed on the owner; but concede that it was the duty of the
96 owner to list the mine for assessment, his failure to do so is not equivalent to a listing and assessment. The mine having been seperated from the surface soil, the law required it to be assessed seperate from the surface soil, and it could not be sold for taxes except upon such an assessment. The mine or mineral, in the law, was neither assessed nor sold.

By the laws of this State the omission of taxable real estate from the tax books is not equivalent to the payment of the tax. The property is bound for the payment of the tax, which ought to have been assessed and collected in whosoevers hands it may come, & it may be assessed and the tax collected for the omitted years whenever the omission is discovered.

97 The plea of the seven years' statute of limitation fails because there was not seven years' possession of the surface or soil of the land and no possession at all of the mine, and the plea of two years' limitation because there was not two years' possession of the mine before suit — brought and because there never was any assessment & sale of the mine for taxes.

Let a decree be entered in accordance with the prayer of the bill.

98 The following depositions are on file in the case & were read at the final hearing of the cause:

Deposition — M. A. Wycough.

M. A. Wycough, a witness introduced on the part of the plaintiff, being first duly sworn, deposes & says:

My place of residence is Batesville, Arkansas; my occupation at present is clerk of the county court of Independence county. As such clerk I am custodian of the assessment lists of the real estate of Independence county. I have in my office the assessment list of the real estate for the year 1874. The assessment was filed in my office on the 21st day of September, 1874, by Daniel Mackelrane, the then assessor of Independence county. On the list of 1874 the N. W. ¼ N. W. ¼ of section 3, township 14 N., R. 7 W., containing
99 51.94 acres, appears assessed in the name of R. A. Cheldren, adm'r. I hereto attach to this my deposition as Exhibit "A" thereto an exact copy of that part of the assessment list of 1874 relating to this particular tract of land. It only appears assessed one time on the assessment list of 1874, and at the place and in the manner indicated by my Exhibit "A." This tract of land appears from the list to be assessed in the same manner as all other lands mentioned on the list. There appears to be no severance of the mineral or agricultural interest in this land, so far as the assessment shows. The assessment of this land, as shown by my exhibits above referred

to, was carried on the tax book of real estate for the year 1874
100 and also for the year 1875, and this land does not appear on the tax books for the years 1874 and 1875 in any other manner than under the assessment above referred to.

X examined:

I find from examination of the tax books for the years 1874 and 1875 that the N. W. of N. W. of sec. 3, township 14 N., R. 7 W., was not paid on by any one, as shown by the books in my office. I have in my office the assessment of real estate for the year 1872. This land appears to be assessed in this book in the same manner as any other lands. There does not appear to be any severance of the mineral or agricultural interest in this land, so far as the assessment shows.

I also have in my office the assessment list for the year 1870,
101 and this land appears to have been assessed for that year without any name and the same as other lands without severance of the mineral or agricultural interest therein. I have in my office also the assessment of real estate for the year 1868. I find this land assessed for that year in the name of Matt Martin. It is assessed as other lands were for that year without any severance of the mineral or surface interest therein. I have also the assessment list for the year 1867. This land is assessed for that year in the name of Thomas C. Smith, R. A. Childress, administrator. Referring to Exhibit A, the particular land described therein appears to have been assessed as all other lands in this county for that year.

M. A. WYCOUGH.

102 EXHIBIT "A" to the Foregoing Deposition.

List of Real Property Assessed for Taxation in Independence County, Ark., for 1874.

Owners' names.	Parts of section.	Section.	Township.	Range.	No. of acres.	Valuation.	State.	
								For paying interest on public debt.
Childress, R. A., adm'r	N. W. N. W.	3	14	7	51.94	104 00	------	9

Filed May 31st, 1886.

RALPH L. GOODRICH, *Clerk.*

103 *Deposition of F. P. Southard.*

My name is Frank P. Southard. I reside in Independence county, Arkansas. I am 32 years old. I am acquainted with Mr. Matt Martin and with Mr. McFayden, the manager of the Keystone Manganese & Iron Co.

I know the land in controversy, being the N. W. N. W. sec. 3, T. 14 N., R. 7 W. I at one time owned the land. I purchased the land from Gov. E. Baxter Dec. 14th, 1878. On this day Gov. Baxter executed to me a deed for the whole land. Under that purchase I took possession of the land and minerals and everything pertaining to the land. At that time the land was not fenced. I cut
104 some board timber on it immediately after I bought it. After the purchase I took possession of the land. I took possession of the land, and it was known to every one in the neighborhood that I claimed it and owned it under the purchase. In January, 1879, I put my brother in possession of the land. He built a house on the land and fenced in the land. He moved into the house in March, 1879. After clearing the land he continued to cultivate and lived on it over five years. I had contracted to sell it to my brother, Poke Southard, and he had a bond for title from me when I sold him the land. I made no reservation, but sold land, mineral, and all. My brother afterward authorized me to make a
105 deed to Thomas B. Padgett. I never made Poke Southard a deed to the land. I held the land and mineral under my purchase and did *and did* not recognize the right to the land to Mr. Martin or any one else. I did not know of any one setting up a claim to the land while I owned it. After I made the deed to Mr. Padgett I think a Mr. Woodward worked on the land digging mineral or had it done. When I sold nearly all the land was fenced; in fact, all except a small strip on the south side. I contracted all the land, however. I kept the taxes paid all the time I owned the land, I think, except one year Mr. Woodward paid the taxes through a mistake. There has been continuous possession
106 of the land since I purchased by myself, Poke Southard, Woodward & Gregory, Lapham, and Case & Einstein and Keystone Manganese & Iron Co. Mr. Matt Martin, the plaintiff in this cause, has not had possession of the lands or minerals since I purchased the same from Governor Baxter. Some time after mining was done on the land in 1882. I saw Mr. Matt Martin on the land, but he had no legal right there.

X examined:

When I bought the land the same was unimproved. There was no improvements on the land, except a pen around the spring. When I say I took possession of the land after my purchase I cut some timber and board timber on the land, offered
107 it for sale, and about a month afterwards put my brother on the land to work on it—I mean by that that he went to work on the land under a contract to purchase the land.

My brother went to work on the land by clearing some land and building a house. He first cleared a small patch before he built his house. My brother did not enclose all the land the first year, but I am not positive whether he finished enclosing all the 2nd or third year. He cleared the land for cultivation, and did cultivate the land after clearing it. The mining spoken of above—the work was done by my brother, who was employed by the Woodward Company, and, I think, was done in the year 1882. This was
108 the first mining that I ever knew done on the land. I cannot say positive whether the mining was done after I sold to Mr. Padgett or before, but think it was done afterwards. Manganese ore was taken out of the ground at the time my brother was doing the mining spoken of.

At the time I saw Mr. Matt Martin on the land he was just riding around. This was after the mining was done by my brother. At the time Mr. Matt Martin was on the land I assisted him at that time in running out some of his land. I acted as chain-bearer. We run on one side of the tract of land in controversy to get a starting point. I was employed in assisting Mr. Matt Martin in running out land six days.

Question. At the time you assisted Mr. Martin running out
109 his lands, or when you were on or near the land in controversy, did you not tell Mr. Martin that you did not claim and had not claimed the mineral on the land now in controversy?

Answer. I did not.

Question. At the same time as spoken of, when on or near the land in controversy, did you not hear Mr. Martin say that he claimed the mineral on all this land; that he had reserved the mineral when he sold the land to Dr. Smith years ago?

Answer. I do not remember his saying so, but heard him talking to my brother about mineral, but do not know exactly what was said about it.

At the time of this survey I owned and lived upon some land that Mr. Matt Martin had sold—the agricultural interest—to
110 Dr. Smith, and I told Mr. Martin that I set up no claim to the mineral on this land, it being the N. ½ S. W. sec. 2, T. 14 N., R. 7 W.

F. P. SOUTHARD.

Deposition of Polk D. Southard.

My name is Polk D. Southard; I reside in Fulton county, Arkansas; I am 41 years old. I am acquainted with Mr. Martin, the plaintiff, and was this morning introduced to Mr. McFayden, who is the manager of the Keystone Manganese & Iron Co. I am acquainted with the land in controversy. I contracted with F. P. Southard to purchase the land in controversy. He executed to me a title bond. Under the title bond I took possession of the land. I think this was in January, 1879.

The first thing I did after taking possession of the land I
111 done some clearing and hauled some timber to build a house.

I got Mr. J. Southard, a surveyor, to run out a part and show me the lines on the lands, so that I would know where to build my house. Some time after this I got Mr. Joe Southard to run out the entire tract. This survey was made so as to establish the line between myself and Mr. Top. Turner. This land has, like other lands, lap corners, and we wanted to know exactly where the line was.

At the time I took possession of the land I did not recognize that Mr. Matt Martin or any one else had any right to the land. I understand the right to a piece of land to carry everything with it—timber, rocks, minerals, and everything. I understand the term land to include this. I moved on this land on the 12th day
112 of March, soon after I contracted for the land. At the time I had built my house and had some outhouses or lots for my stock. I had a family at that time. I moved on the land for a home. I enclosed this land. I put ten acres in cultivation that season after I moved on the land, and I kept enclosing the land until I got it all about enclosed. This, I think, was completed about the third year.

I done some mining on the land. I worked under Mr. Woodward, who, I understand, worked under a lease from Case, Lapham, and Einstein. I claimed possession all the time of the lands, outside of the fencing, included in this tract, and used timber off the land when I needed it.

I held possession of the land a little over five years. I moved off the land on the 1st day of March, 1884. At the time I moved off the land I considered the land in the possession of the Fer-o-
113 Manganese Co. under a lease from Case, Lapham, and Einstein. Mr. Woodward tried to employ me to work longer on the land for the company.

During the time I was mining on this land I did not hear of Mr. Matt Martin setting up any claim to said lands, and while I had possession of the land I did not recognize Mr. Matt Martin's right to come on the land any more than any other man.

By virtue of my title bond I executed to Case, Lapham, and Einstein the manganese & iron that might be on said land. I notified Mr. Case at this time that I only held the land under a bond for title.

X examined:

I do not recollect the date of my deed to Case, Lapham, & Ein-
114 stein. At the time this deed was made I included minerals on other lands in same deed. I think at the time I contracted for this land from my brother I knew that my brother had purchased it from Gov. E. Baxter, and that Baxter held under a tax deed. As long as I held the land I used it for farming purposes. I worked the land under contract for mineral. This was before my bond for title expired. I know that by consent *that* my brother made a deed to Mr. Thos. Padgett for the land.

The deed made by my brother to Mr. Padgett was made by my consent and Mr. Padgett, and afterwards he made me a title bond for the agricultural interest in said land. Afterwards, when

my time fell due to Mr. Padgett, I sold out to F. P. Southard and Marsh Reynolds. I sold to them my agricultural in-
115 terest in said land.

The mining that I done on the land was after I had sold the mineral right to Case, Lapham, and Einstein. No mineral had been taken off of this land prior to my digging for it as above stated. There was mining going on at what was known as the Jess Southard mines. This was some time after I moved on the land in controversy.

This answer objected to by the defendant as in reference to other mining places.

Prior to the time that I dug for Woodward I used the land entirely for agricultural purposes. I think it was in the year 1882 or 1883 that I mined on this land for Mr. Woodward. I do not remember of any working of manganese in that part of the country
116 prior to the work done by Mr. Woodward & Co. While I lived on this land I saw Mr. Martin on the land. I think this was in the year 1883 or 1884. He and my brother was surveying out some lands. At this time Mr. Martin & myself had some talk as to Mr. Martin's claim of mineral interest on this land. At this time Mr. Martin told me that he claimed the mineral on thi land; this was after I had been digging for Mr. Woodward. He told me not to dig any more on the land. Mr. Martin told me I had trespassed on his mineral. I told him if I had done this I was sorry I had trespassed on any man. I did not tell him that I was sorry in any other way. My theory was that he had no
117 title; that his title had slipped under the tax title. Mr. Martin told me that he would sue me and the company for the ore we had taken away. If he ever sued I have never received any notice of the suit. I dug the ore and delivered it. I live in Fulton county, I think about 50 miles from here. There was no subpœna served upon me to testify in this cause. I came at the instance and request of my brother, F. P. Southard, the witness who testified today; also Mess. Coleman & Yancey requested me to come.

Re-examined:

I was assured that I would be paid for my time and ex-
118 penses by a letter from Coleman & Yancey. F. P. Southard came to my house and informed me that he was sent by Coleman & Yancey, as attorneys for Keystone Manganese & Iron Co., and that my expenses would be paid.

The plaintiff, by attorney, objects to the statements made by F. P. Southard, the witness.

I have no interest in this case in any way whatever. I did not stop work at digging in the land when Mr. Martin, at the time, notified me to stop. I had already stopped. Some months before Maj. Yancey, as agent for the Fer-o- Manganese Co., had stopped me and paid me for my work. I did not consider that Mr. Martin had any right to stop me, and if the company had ordered me to go on

with the work I should have done it, regardless of Mr. Martin's orders, as I did not recognize his claim. I did not consider that Mr. Martin had any more right to stop me than any other man. I considered his right gone, from what Col. Baxter told me.

119

POLK D. SOUTHARD.

Deposition of J. T. Rogers.

My name is J. T. Rogers. I reside in Independence county, Arkansas. I am 33 years old. I am acquainted with the parties to this suit only partially. I know the land in controversy; I live near it. The place is known as the Polk Southard place. I have known this land about five years. I first knew it as the Polk Southard land. I suppose from the improvements on it when I moved there that he had been living there about one year. Polk Southard was in possession of the land until he sold out his mineral right to Case, Lapham, and Einstein. Case, Lapham, and Einstein have been in possession ever since. If Mr. Matt Martin ever had possession of this land I never heard of it. I live near the land. The possession of the land has been continuous with Polk Southard, F. P. Southard, and Case, Lapham, & Einstein up to this time, they holding it adverse to any one else. This was so understood by the neighborhood. I always understood that the parties held the mineral on said land all the time.

120

X examined:

I think Mr. Polk Southard done the first mining on the land. I do not remember the date. I knew nothing of the land previous to moving where I now live, which was about five years ago.

121

J. S. ROGERS.

Deposition of G. M. Reynolds.

My name is G. M. Reynolds. I am a resident of Independence county, Arkansas. I am 44 years old. I am acquainted with the superintendent, Mr. McFayden. I know Mr. Martin when I see him. I am acquainted with the land in controversy. I have known the land for about ten years. I know that Polk Southard lived on the land. I understood that Frank Southard sold to Polk Southard. I never saw the papers. I live within 3 miles of this land. Polk Southard moved on the land in 1879 is my recollection; I think in the first part of the year. He lived there on the land about five years. While Southard lived on the land my understanding was that Case, Lapham, & Einstein owned the mineral on the land, and now the Keystone Manganese & Iron Co. own it through Case, Lapham, & Einstein. I have seen the land often during the last 8 or 9 years. During that time I have never seen Mr. Martin on the land, and if he had been in possession at any time I would have known it or heard of it. I know

122

where the boundary of the north and south line is, but do not know the east and west lines. I know about where the lines run, but not definitely. The whole tract is under fence and under culti-
123 vation, except a small strip on the north and a small strip on the south side of the land. The timber of the land outside of the fence on this piece of land is used by parties living on it for fire-wood. Frank Southard & myself bought the agricultural right on the land from Polk Southard. Mr. Case made us the deed, but reserved the mineral, Case, Lapham, and Einstein having purchased same from Polk Southard prior to this sale.

X examined:

I hauled mineral from this land for Mr. Polk Southard, and Mr. Yancey, as agent for Woodward and Gregory, paid me for the hauling. I think this was about four years ago. The ore that I hauled was dug out by Mr. Polk Southard. This was the first mining that I ever knew done on this land. The ore was
124 dug out in the field—in the south part of the field. When I speak of all the land fenced I mean also that the land was in cultivation. Mr. Southard cultivated about all of it.

GEORGE M. REYNOLDS.

Deposition of Robert A. Childress on the Part of the Plaintiff.

My name is Robert A. Childress. I am 72 years old. I reside in Washington township, Independence county. I have lived in Independence county since 1830. I am acquainted with Matt Martin, the plaintiff in this suit; have been acquainted with him ever since before the civil war. I am not acquainted with the Keystone Manganese & Iron Company or their man-
125 ager. I had charge of the land in controversy as the administrator of Thomas C. Smith, deceased. I also had a mortgage on this land, being the N. W. N. W. sec. 3, T. 14 N., R. 7 W. My mortgage was given to me by Thomas C. Smith. I think my administration commenced in the year 1857 or '58 and ended in the year 1882. I assessed this land in connection with other lands belonging to T. C. Smith's estate in the year 1874; a Mr. Daniel McElvane was the assessor. When I say I assessed the land I mean to say that I gave Mr. McElvane as assessor the numbers of this and other lands. I assessed this land as administrator of the estate of Thomas C. Smith. At the time I assessed the land, in 1874, I was administrator for the estate of Thomas C. Smith.
126 The date of my mortgage given by Thomas C. Smith was dated in 1855 or thereabouts. At the time I took my mortgage on the land I knew the character of the title. I had in my possession the deed from Matt Martin to Thomas C. Smith. The information that I had from the deed from Smith and from Martin was that Thomas C. Smith only held the agricultural interest, and I heard Smith say that he did not claim the mineral interest in the land, but only claimed the agricultural interest; the mineral interest belonged to Matt Martin. The interest of Thomas C. Smith

in the land was whatever interest Matt Martin had in the agri-
cultural interest in said land. My impression was that one
127 George Martin had an interest — this tract of land. I
never claimed any interest in the mineral in said land, either as administrator or under my mortgage, for the reason that at that time Matt Martin owned the mineral in said land, as shown by the deed in my possession, as above referred to. At the time I assessed the land, in 1874, I don't recollect anything said about the mineral. I gave in the land just as I gave in my land and other lands.

X examined:

The reason that my administration on the estate of Thomas C. Smith was kept open so long was because I was waiting for Matt Martin to perfect the title to Smith by getting the interest of
128 George Martin's heirs in said land; that unless Thomas C.
Smith could get a title to this land there would not be enough to pay off the debts against the estate; also the war coming up prevented my *my* making settlement and neglect. We had Matt Martin's promise that when he got the title from George Martin that he, Matt. Martin, would complete the agricultural interest in the land to Thomas C. Smith, and that was what I as administrator was waiting on. From the time I became administrator I assessed the land without any reference to mineral. I paid the taxes on the land regularly as administrator of Thomas C. Smith until up to the time
the land was forfeited. In giving in lands I generally gave
129 them in as other lands in the neighborhood was assessed
without regard to mineral.

This land in 1874, I see from the record, was assessed at $104.00. I only recollect, from the record, my attention being called to the assessor's books for the year 1874. Mr. Matt Martin never furnished me any money to pay the taxes on this land. I paid them out of my own money and money belonging to the estate of Thomas C. Smith. Mr. Martin never offered or tendered me any money to pay the taxes. I don't think there was any improvement on the land in 1874. I do not know, however, as I never was on this land, to my knowledge.

Re-examined:

130 My mortgage on the land was never paid. My debt against
the estate was the largest debt against the estate. The debt originally was $1,100.00. In 1874, when I assessed the land, I had no authority from Matt Martin to assess his mineral interest in said land

Re-X examined:

I do not know of any one else assessing the mineral interest in this land. I know of no assessment of the land except my own assessment.

I never attempted to foreclose my mortgage on this land.

R. A. CHILDRESS.

Deposition of Robert R. Case on Part of Defendant

My name is Robert R. Case; I am 40 years old; I reside
131 in Independence county, Arkansas; I am acquainted with the parties to this suit.

I am acquainted with the land in controversy, N. W. N. W. sec. 3, T. 14 N., R. 7 west. I have known this land since 1880. I purchased the mineral interest in this tract of land from Polk Southard. Polk Southard only had a bond for title; I bought his interest in the mineral under this title bond. Subsequent to this I also — for the agricultural interest and all, from Thomas B. Padgett, including agricultural interest and mineral. I held possession of the mineral in this land from the time of my purchase up to the present time; I have now a lesser interest at present. I sold *to* ⅓ to J. S. Lapham and ⅓ to Wm. Einstein and hold ⅓, and we all leased to Woodward; this lease was cancelled. Subse-
132 quently to this we leased to P. E. Cheatham, who transferred his interest to the Keystone Manganese & Iron Co. The land an- minerals are now in the possession of the Keystone Manganese & Iron Co. under the original lease of Lapham, Einstein & Co. I have never recognized any one'- else right or possession to the minerals since I owned it. There was mining done on this piece of land by Polk Southard for E. H. Woodward. I have kept the taxes paid on the land since my purchase. Mr. Matt Martin has never made any tender *or* money to pay the taxes to me. The agricultural interest in this land is now owned by Maxfield, Marsh Reynolds, and Frank Southard. I did at one time own both the agricultural and mineral interest- in this land. I sold the agricultural interest
133 and also leased the mineral interest. When I sold the agricultural interest I reserved the mineral interest. This occurred about 3 or 4 years ago.

X examined.

I purchased the mineral interest in the land March 18th, 1881, from Polk Southard. This was the first title I got to this land, being what interest Polk Southard had in the minerals in this land. When I say I took possession — the mineral in this land after my purchase I mean that I uncovered some *on* on the land and also got out some ore from the land. This was in the year 1881—some time after my deed from Polk Southard. My deed for this land purchased from Thomas B. Padgett was dated 19th November, 1882. This was a quitclaim deed.

ROB'T R. CASE.

Filed May 31st, 1886.

RALPH L. GOODRICH, *Clerk.*

134 *Affidavit.*

United States Circuit Court, Eastern District of Arkansas.

MATT MARTIN *v.* KEYSTONE MANGANESE & IRON CO.

I state that I am familiar with the property involved in this action, and that the mineral interest in it is worth more than the sum of five thousand dollars.

CRAIG HAMMOND.

Subscribed & sworn to before me this 4th day of August, 1886.
[L. S.] H. F. ARCHER,
Notary Public.

135 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 14th day of July, in the year of our Lord one thousand eight hundred and eighty-six, and the Independence of the United States of America the one hundred and eleventh.

[The Seal of the Circuit Court, Arkansas District, U. S. A.]

RALPH L. GOODRICH, *Clerk,*
By W. P. FEILD, *D. C.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 313. The Keystone Manganese and Iron Company, appellant, *vs.* Matt Martin. Filed August 10, 1886.

IN THE SUPREME COURT OF THE UNITED STATES.

THE KEYSTONE MANGANESE & IRON COMPANY

vs.

MATT MARTIN

EXHIBIT "A." Referred to in the Bill of Complaint in said Cause.

Deed. Matt Martin to Thos. C. Smith.

Know all men by these presents that I, Matt Martin, for and in consideration of two thousand dollars, to me in hand paid by Thomas C. Smith, have granted, bargained, and sold, and do hereby grant, bargain, and sell, unto said Thomas C. Smith and his heirs the following parcels of land in Independence county, Arkansas, and described in the United States surveys as the north half of the southwest quarter of section two; the northeast quarter of the northwest fractional quarter of section two; the northwest quarter of the northwest fractional quarter of section three, and lot number one of the northwest fractional quarter of section two, and the north half of the southeast quarter of section three, all in township fourteen north, of range seven west, containing in the aggregate three hundred and forty-five acres and twenty-two hundredths of an acre; to have and to hold the said lands, with the improvements and rights thereto appertaining, to the said Thomas C. Smith and his heirs forever, subject only to this condition: that I, my heirs, representatives, and assigns, are to have, and I do hereby retain to myself and them, a perpetual and unlimited right in fee to all the stones and minerals that may be in or upon said lands, and full and unquestioned power and right to enter said lands for the purpose of digging, quarrying, and mining upon said lands, with full power and right of ingress and egress thereto and therefrom, and upon said lands to remain and erect buildings thereon, and to use such timber and other materials as may be convenient and proper for the excavation, preservation, manufacture, and removal of such stones and minerals and improvements as may be connected with the working of said stones and minerals, it being well understood by the parties hereto that the right of sale and all else is hereby conveyed to said Thomas C. Smith, except to the right to the stones and minerals on said lands, which, with all needful and proper rights and privileges to obtain, prepare for market, and remove the same, are expressly reserved from sale.

And in testimony whereof I, the said Matt Martin, hereto sign

my name and affix my seal, at Batesville, Arkansas, this twenty-seventh day of June, 1853.

MATT MARTIN. [SEAL.]

Witness:
H. F. ARCHER.
GEORGE CASE.

STATE OF ARKANSAS, *County of Independence,* } *ss:*

Before me, Jesse Searcy, a justice of the peace of the county of Independence and State of Arkansas, on the 27th day of June, 1853, appeared Mathew Martin, known to me *and* to be the grantor in the foregoing deed, and he stated that he had executed the same for the consideration and purposes therein mentioned and set forth, which I certify.

Given under my hand the day and date above written.

JESSE SEARCY, *J. P.*

The foregoing instrument of writing was filed for record in my office on the 5th day of December, A. D. 1853.

WM. R. MILLER,
Clerk and ex Officio Recorder.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate is a true, correct, and compared copy of the original remaining of record in my office of the deed exhibited with the bill as Exhibit A in the above-entitled cause.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this seventh day of March, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth.

Attest: RALPH L. GOODRICH, *Clerk.*

It is hereby agreed that the foregoing is a copy of the deed exhibited with the bill of complaint in said cause and introduced in evidence at the hearing thereof, and erroneously omitted from the transcript by the clerk of the circuit court; and we hereby stipulate

and agree that the record in said cause may be amended by filing therein the foregoing copy of said deed.

Feb. 26, 1889.

U. M. ROSE,
For Appellant.

J. M. MOORE,
For Appellee.

[Endorsed:] Sup. Court U. S. 1888, Oct. term. No. 313. The Keystone Manganese & Iron Co., app't, *vs.* Matt Martin. Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Mar. 12, 1889. James H. McKenney, clerk.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

THE KEYSTONE MANGANESE AND IRON COMPANY, *Appellant*,

v. [No. 313.]

MATT MARTIN.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLANT.

U. M. & G. B. ROSE.

PRESS PRINTING CO., LITTLE ROCK, ARK.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1888.

THE KEYSTONE MANGANESE AND IRON COMPANY, *Appellant*,

v. [No. 313.]

MATT MARTIN.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLANT.

HISTORY OF THE CASE.

On the 8th day of January, 1886, Matt Martin filed in the court below his bill in chancery, in which he alleged that on the 27th day of June, 1853, he was the owner and in possession of the northwest quarter of the northwest quarter of section 3, township 14 north, range 7 west, in Independence county, Arkansas; on which day he sold and conveyed said tract to one Thomas C. Smith, reserving in his deed all the mineral and ores in and upon the said land; that ever since that time plaintiff has been in possession of the said minerals and ores, con-

sisting of large and valuable deposits of manganese; that on the —— day of December, 1885, the defendant unlawfully entered upon said mineral deposits and began to remove the ores from said tract, and has already removed ores of the value upwards of $5000; and that defendant continues to remove said ores, though plaintiff has requested him not to do so; that plaintiff cannot keep an account of the ores thus removed; that the damages thus suffered by plaintiff are irreparable; wherefore plaintiff prays for an injunction, for an account of the ores taken, and for a decree for the full value thereof.

The defendant answered, alleging that the tract of land mentioned in the bill had been sold for taxes on the 15th day of May, 1876; at which sale it was bought by Elisha Baxter; that after two years from the date of said sale, no one having offered to redeem said land, a deed for said tract was executed to said Baxter, under said tax sale, by the Clerk of said county; that on the 14th day of December, 1878, Baxter conveyed said land to Frank P. Southard; that on the 17th day of December, 1881, Southard conveyed the land to Thomas B. Padgett; that on the 19th day of November, 1882, said Padgett conveyed said land to Robert B. Case; that on the 9th of day of November, 1881, said Case conveyed to William Einstein and Lorenzo S. Lapham an undivided two-thirds of said tract; that on the 7th day of April, 1885, Case, Einstein and Lapham leased all the ores and minerals on the land to P. E. Chapin, for the term of twenty-seven years from that date; that on the 30th day of October, 1885, said Chapin assigned this lease to the defendant. Defendant pleads the statute of limitation of two years applying to tax sales, and also the general statute of limitation of seven years for the recovery of lands held adversely.

Bill, p. 1, Answer, p. 2.

Exhibited with the answer are the several documents referred to. Pp. 5-20.

Replication was filed (21) and the cause was set down.

The following evidence was read herein:

Mr. M. A. Wycough testified (26) as follows: That the land was assessed for 1874 and 1875 by its numbers, according to the United States survey.

Frank P. Southard testified (28) that he bought the land from Baxter on the 14th day of December, 1878, and that he took possession of it, and of the minerals on it; that he cut board timber on it immediately after he got it. It was known to every one in the neighborhood that he had bought it; he built a house on the land and fenced it; he moved into the house in March, 1879; he lived on the land and cultivated it for five years; sold it to his brother without any reservation of the minerals, and by his direction he made the deed to Padgett; held both land and minerals, and did not know that any one claimed it while he owned it. After deed was made to Padgett a Mr. Woodward worked on the land, digging minerals. Since my purchase there has been a continuous possession by the defendant and those under whom it claimed. When I bought there were no improvements on the land except a pen around the spring. When I took possession I cut some timber and some board timber on the land, and offered it for sale; and about a month after that I put my brother on it under his contract to purchase it. He cleared some of the land, and built a house. He did not inclose all of the land the first year; and I

am not positive whether he included it all the second or third year. He cleared it for cultivation, and did cultivate it. The mining was done by my brother, who was employed by the Woodward company, and was done, I think, in 1882. At that time manganese was taken out of the land. I saw the plaintiff on the land, but he had no right there. He was just riding around. This was after the mining done by my brother. I assisted the plaintiff in running a line on one side of the tract, about six days, going as a chain carrier.

Polk D. Southard testified (28) as follows:

Under my title bond I took possession of the land in January, 1879, and did some clearing, and cut some timber, and built a house. I also had the tract surveyed. I moved on the land for a home, put ten acres in cultivation, and inclosed nearly all of it. I did some mining on it under Mr. Woodward, who held under a lease from Case, Lapham and Einstein. While I was on the land I claimed all of it, including the minerals; and I held possession for something more than five years, moving off on the 1st day of March, 1884. While I was on the place I did not hear that the plaintiff had set up any title to it. The mining that I did was after I had sold the mineral right to Case, Lapham and Einstein. No minerals had been taken from the lands prior to the time of my digging. Before I dug for Woodward I used the land solely for agricultural purposes. I think it was in 1882 or 1883, that I mined on the land for Woodward. After I had been digging for him I saw plaintiff on the land, and he said he claimed the minerals on it, and told me not to dig any more. This was in 1883 or 1884.

J. T. Rogers testified (32) as follows:

I have known the lands about five years. Defendant and those under whom he claimed have been in possession of it all that time. I never knew plaintiff to claim it.

G. M. Reynolds (32) testified as follows:

I live within three miles of the land. Polk Southard moved on it in 1879, about the first of the year, and lived there about five years. Never knew the plaintiff to be in possession of it. If he had been I should have known it. I hauled minerals from this land for Polk Southard about four years ago.

[The depositions were filed May 31st, 1886, (35).]

Robert A. Childress testified: (33) I took charge of the land as administrator of Thomas C. Smith, deceased, and also held a mortgage on it executed by Smith in 1855 to me. My administration began in 1857 or 1858, and ended in 1882. I assessed the land as part of Smith's estate in 1874. At the time I took the mortgage I knew that Smith only had the agricultural interest, and I heard him say that the minerals belonged to plaintiff. I never claimed any interest in the minerals. I gave in the land to the Assessor just as I gave in other lands; and I do not recollect that anything was said about minerals. I do not think that there was any improvement on the land in 1874. Martin never offered to pay taxes on the lands as far as I know. I had no authority to assess the mineral interest. I know of no assessment of minerals in the land.

Robert R. Case testified (35) as follows: I have known the lands since 1880. I bought the mineral interest in it from Polk Southard; and have held possession of the mineral interest from that time to the present, having now an interest as lessor. I never have recognized any right in any one else to

the minerals since I have owned them. Polk Southard did some mining on the land for Woodward. I have kept the taxes paid on the land ever since my purchase. The agricultural interest in the land is now owned by myself, Fred Reynolds and Southard. I did at one time own the agricultural interest, but sold it, reserving the mineral interest. This was about three or four years ago. I uncovered some of the ore, and got out some of the ore on the land in 1881.

This was all the testimony.

There is an affidavit that the mining interest in the lands is worth more than five thousand dollars. (36).

In reference to the chain of title of defendant, (which, however, is not disputed), it may be as well to say that it is provided by statute that, "If any person shall convey any real es- "tate by deed purporting to convey the same in fee-simple "absolute, or any less estate, and shall not at the time of such "conveyance have the legal estate in such lands, but shall "afterwards acquire the same, the legal or equitable estate "afterwards acquired shall immediately pass to the grantee; "and such conveyance shall be as valid as if such legal or "equitable estate had been in the grantor at the time of the "conveyance."

Digest Ark. St., 1874, sec. 832.

The case turns partly on the construction of the following statute:

SEPARATE ASSESSMENT OF MINERALS.

"Where the fee of the soil of any tract, parcel or lot of "land is in any person or persons, natural or artificial, and the

"right to any mineral therein in another or others, the same "shall be valued and listed agreeably to such ownership, in "separate entries, and taxed to the parties owning the same "respectively."

Dig. Ark. St., 1874, Sec. 5115.

Other statutes that must be considered are as follows:

METHOD OF MAKING ASSESSMENTS.

"It is hereby made the duty of every person seized or hold-"ing lands as mentioned in this act, to list the same for tax-"ation with the County Clerk on or before the first day of Jan-"uary of each year after the same shall be subject to taxation; "and, in case of neglecting to list the same as aforesaid, the "County Clerk shall, when the same shall be thereafter listed, "charge on each tract so neglected to be listed, the taxes for "each year the same shall have been omitted after becoming "liable to taxation, together with twenty-five per centum pen-"alty on each of such year's taxes in addition to the taxes of "the current year."

Id., sec. 5078.

"SEC. 5116. Each Assessor shall, on or before the third "Monday of September in the year 1876, and every fourth "year thereafter, make out and deliver to the County Clerk, a "return in tabular form, contained in a book to be furnished "him by such County Clerk, of the amount, description and "value of the real property subject to be listed for taxation in "his county, which return shall contain:

"*First:* The names of the several persons, companies or "corporations, in whose names the several tracts of real prop-

"erty, other than town property, in each township within his "district shall have been listed, and in appropriate columns, "opposite each name, the description of each tract, designat- "ing the number of the section and part thereof, and the "township or survey, listed in such name, and the value of "each separate tract, as determined by the Assessor.

"*Second:* The names of the several persons, companies "or corporations, in whose names the several lots of real "property in each town or city in his county shall have been "listed; and in appropriate columns, opposite each name, the "description of each lot and the value thereof as determined "by the Assessor; and such description shall designate the "town or city, and the number of lot and part thereof; and, "if a part of a lot is listed, it shall state the number of feet "along the principal street on which it abuts. If the name "of the owner of any tract of land or lot shall be unknown, "the word 'unknown' shall be entered in the column of "names opposite said tract or lot; in making such rertnrn "each separate tract of land in each township shall be "placed according to the numerical order of the sections, and "each town or city lot according to the numerical order of "lots or blocks, which return shall be as near the following "form as may be practicable:

OWNER'S NAME.	TOWNSHIP.	RANGE.	Number of Section.	What Part of Section.	Number of Acres Improved.	Value per Acre.	Number of Acres Unimproved.	Value per Acre.	TOTAL VALUE

Id.

"SEC. 5121. Any person listing real estate for assessment "may present to the Assessor a written description of the same, "and the Assessor, after having entered the same upon the "assessment list, shall return the same to him, with a certifi- "cate verifying the same as the assessment list furnished by "such person for the assessment of that year.

"SEC. 5122. The Collector shall cause, when so requested, "his receipt for taxes to correspond with the written descrip- "tion in the list certified by the Assessor, when presented by "the tax payer, whether such written descriptions agree with "the tax-books or not.

"SEC. 5123. Such tax receipts, when accompanied with "such written descriptions, shall be a protection against sale "or forfeiture of the land therein described." *Id.*

THE EFFECT OF A TAX DEED AS EVIDENCE.

"SEC. 5206. At any time after the lapse of two years "from the time of sale of any tract or lot of land for taxes, if "the same shall remain unredeemed, the County Clerk, or any "of his successors in office, on the production of the certifi- "cate of purchase, shall execute and deliver to the purchaser, "his heirs or assigns, a deed of conveyance, for the tract or "lot described in such certificate. In case the certificate of "purchase has been assigned, the County Clerk shall briefly "recite the fact in the deed. The deed so made by the "County Clerk shall be acknowledged and recorded in the "same manner that other deeds and conveyance of real estate "are required to be acknowledged and recorded by the laws "of this State, and shall vest in the grantee, his heirs and "assigns, the title to the real estate therein described; and

"shall be received in all courts and places where the title of "the real estate thereby conveyed is involved, as conclusive "evidence that each and every act and thing required to be "done by the provisions of this act had been complied with; "and the party offering such deed in evidence shall not be re- "quired to produce the assessment, appraisement, notice of "sale, nor any other matter or thing, as evidence to sustain "such conveyance and the title thereby acquired: *Provided*, "*however*, That the party controverting such deed and the "title thereby conveyed may, for the purpose of defeating or "invalidating the same, show either one of the following facts "only:

"*First.* That the land conveyed by such deed was not "subject to taxation at the time of the assessment thereof, "under which assessment such sale was made.

"*Second.* That the taxes due thereon had been paid ac- "cording to law before the sale.

"*Third.* That such land had been duly redeemed accord- "ing to law, before the execution of such deed.

"*Fourth.* That such land was the property of a *femme* "*covert*, an insane person, a minor, or a person in confinement "at the time the land was sold and the deed executed."

ERRORS IN ASSESSMENTS.

"SEC. 5215. No sale of any land or lot for delinquent "taxes shall be considered invalid on account of its having "been charged on the tax-book in any other name than that "of the rightful owner: *Provided*, That such land or lot be, "in other respects, sufficiently described on the tax-book, and

"the taxes for which the same is sold be due and unpaid at "the time of such sale."

CORRECTION OF ERRORS OF DESCRIPTION.

"He (the County Clerk) shall from time to time correct "any errors which he may discover in the name of the owner "in the valuation, *description*, or quantity of any tract or lot "contained in the list of real property in his county." *Id., sec. 5146.*

"SEC. 5124. Whenever any person shall ascertain that an "error has been made in the *description* of his lands, either by "the Assessor, in listing the same, or by the Clerk in making "out the tax-book, he may present such certified description "to the County Clerk, who shall correct the error in accord-"ance therewith on the margin of the assessment list in his "office, and certify such amendment to the Collector of his "county, who shall make a like amendment on the tax-book." *Id.*

LIMITATION AS TO SUITS AGAINST PURCHASERS AT TAX SALES.

"SEC. 5217. All actions to test the validity of any pro-"ceeding in the appraisement, assessment or levying of taxes "upon any land or lot, or part thereof, and all proceedings "whereby is sought to be shown any irregularity of any offi-"cer, or defect or neglect thereof, having any duty to perform "under the provisions of this act in the assessment, appraise-"ment or levying of taxes, or in the sale of lands or lots de-"linquent for taxes, or proceeding whereby it is sought to "avoid any sale under the provisions of this act, for irregu-"larity or neglect of any kind, by any officer having any duty "or thing to perform under the provisions of this act, shall

"be commenced within two years from the date of sale, and "not afterward."

"No action for the recovery of any lands or for the pos- "session thereof against any person or persons, their heirs or "assigns, who may hold such lands by virtue of a purchase "thereof at Sheriff's or Auditor's sale for the non-payment of "taxes, or who may have redeemed the same from the Auditor "of this State by virtue of any act providing for the redemp- "tion of lands forfeited to this State for the non-payment of "taxes, or who may hold such land under an Auditor's deed, "commonly known as a donation deed, shall be maintained "unless it appear that the plaintiff, his ancestor, predecessor "or grantor was seized or possessed of the lands in question "within two years next before the commencement of such suit "or action." *Id., sec. 4117.*

GENERAL STATUTE OF LIMITATIONS AS TO LANDS.

"No person, or persons, or their heirs, shall have, sue or "maintain any action or suit, either in law or equity, for any "lands, tenements, or hereditaments, but within seven years "next after his, her or their rights to commence, have or "maintain such suit shall have come, follow or accrued; and "that all suits, either in law or equity, for the recovery of any "lands, tenements or hereditaments shall be had and sued "within seven years next after title or cause of action ac- "crued." *Id., sec. 4113.*

This language is followed in the same section with exceptions in favor of minors, married women and lunatics, not pertinent in the present inquiry.

ASSIGNMENT OF ERRORS.

1. The court erred in holding that the tax sale did not carry the entire estate in the land to the purchaser.

2. The court erred in holding that the plaintiff's claim was not barred by the statutes of limitations.

3. On the whole case as presented, the court erred in rendering a final decree for the plaintiff, when it should have dismissed his bill for the want of equity.

ARGUMENT.

1. By the laws of Arkansas, a tax sale of land cuts off all claims of every kind, and is good against all the world.

Merrick v. Hutt, 15 Ark., 343.

Craig v. Flanagin, 21 id., 322.

Biscoe v. Coulter, 18 id., 440.

2. For more than thirty-three years the plaintiff failed to assess any interest in the land. In the meantime it does not appear that any one knew that there were any minerals on it. Evidently the statute was not intended to apply to a case of possible and undiscovered minerals; for they could not be assessed at all, having no known value. The statute must receive a reasonable construction.

Assessments are made from external observation. When there is anything on a tract of land to indicate that there are any minerals that are worked or that have been explored, it is intelligible that an Assessor shall be required to examine the county records, if need be, so as to make his assessment accu-

rate; but it is not reasonable to hold, as the court below did, that the Legislature intended that every Assessor should be presumed to have a perpetual knowledge of the contents shown by the millions of conveyances on record, or on file, in the County Recorder's office; for this would be to ascribe to every Assessor a capacity which it is known that no human being ever possessed. Merely possible property is not taxable. As no minerals had been discovered on the land prior to the tax sale, there were none to be assessed; as the plaintiff virtually asserted by not putting his claim on the assessment list. For the purposes of an assessment minerals that are not known, and which therefore have no ascertainable value, can not be said to exist. *De non apparentibus, et non existentibus eadem est ratio.* To hold otherwise in this case is to forget that the law is a practical science, dealing with practical things.

3. Under the laws of Arkansas, the name of the owner of a tract of land need not appear on the assessment book; and if a wrong name is given on it, the assessment will not be thereby invalidated. The statute so provides.

Merrick v. Hutt, 15 Ark., 331.

Worthen v. Ratcliffe, 42 id., 343.

The court below seemed to think that the surface of the land alone was assessed in the present instance; but such was not the case. The lands were described in the assessment according to the public surveys, without qualification; and the land as thus described extended from the center of the earth to the stars, and beyond. Had the lands been assessed *minus the minerals*, then the court below would have been correct.

The land was not described as surface land, but it was described as all other lands in the State are described, that is, according to the public surveys. Under the description in question it would be as correct to say that the surface lands were not described as to say that the mineral lands were not described; for the description covers both equally.

If the plaintiff was not content with that description the law afforded him ample means to have it corrected. If he failed to make the correction he is bound now by his acquiescence; for the law was not made to promote ingenious and indefinite tax dodging.

In *Gossett v. Kent, 19 Ark., 611*, it appeared that the law required that the lands of residents and non-residents of the county in which the lands lay should be placed on separate lists; and that the methods of collecting the taxes on these two lists was very different. In the case of the resident land owner the collector was compelled to exhaust his personalty before selling the land, and if that was not done the sale was void; as held in *Jones v. McLain, 23 Ark., 429*. But in *Gossett v. Kent* the court held that if there was an error in the assessment, by which lands were put on the wrong list, the sale would be valid if the appropriate proceedings, in accordance with the law governing that list, were had, on the ground that it was the fault of the land-owner that he had not had the proper correction made in the time and in the manner allowed by law. The court said:

"If non-residents have any fears that their lands may be "improperly placed in the resident's list, and sold without the "right of redemption, let them see to the assessment list when

"it is returned; and if an error has occurred, let them apply to "the County Court at the time fixed by the public law for that "purpose, and cause the error to be corrected."

And so whenever no correction is applied for, or made, the character of the lands becomes fixed as against all the world.

Worthen v. Ratcliffe, 42 Ark., 343.

The assessment in all respects has then the force and effect of a judgment, and cannot be collaterally attacked.

Twombly v. Kimbrough, 24 id., 467.

Jacks v. Dyer, 31 id., 341.

McDermott v. Scully, 27 id., 228.

As was said by the court in *Garibaldi v. Jenkins, 27 Ark., 456*, "There must be a point at which it is determined" whether the lands have been properly assessed, after which it becomes "a matter adjudicated," "and all parties concerned were there-"after bound by such determination, and the lands were then "subject to advertisement, sale and redemption *according to* "*their status on the assessment lists.*"

As to the effect of a tax deed as evidence, the Supreme Court of Arkansas has decided that the statute only has the effect to make the deed *prima facie*, and not conclusive evidence of the regularity of the sale.

Cairo R. R. Co. v. Parks, 32 Ark., 132.

State v. Newton, 33 id., 284.

Little Rock R. R. Co. v. Payne, id., 820.

Hickman v. Kempner, 35 id., 508.

Clayton v. Johnson, 36 id., 414.

However, nothing was attacked in the case except the assessment; and that was quite as regular as any assessment that was ever made.

4. And then as to the statutes of limitation; and first, as to the statute of two years applying to tax sales. This statute begins to run from the day of sale.

Radcliffe v. Scruggs, 46 Ark., 104.

Admitting, for the sake of argument, that the assessment was irregular, yet the tax deed gave a color of title under which the statute would run.

Radcliffe v. Scruggs, ubi supra.

Logan v. Jelks, 34 Ark., 547.

Pillow v. Roberts, 12 id., 822.

Elliott v. Pearce, 20 id., 516.

Pleasants v. Scott, 21 id., 374.

Cooper v. Brooks, 20 id., 546.

Pillow v. Roberts, 13 How., 472.

This suit was brought January 8, 1886. Frank P. Southard bought the land on the 14th day of December, 1878, and immediately went into possession of it (28), seven years and twenty-five days before the suit was brought. The first mineral that was ever taken out of the land was in 1881. (See testimony of Case, 35.) This was soon after the deed was made by Southard; which was on the 17th day of December, 1881, (9).

As to the general statute of limitations, the evidence clearly shows a continuous adverse possession by appellant and its predecessors in title for more than seven years before this suit was begun.

5. But even if we were wrong as to these points, it would still follow that after such a long delay the plaintiff would be remitted to his remedy at law to establish his title.

Reid v. Gifford, 6 Johns. Ch'y, 20.

Parker v. Winnipiscogee Co., 2 Black, 552.

Respectfully,

U. M. ROSE,
G. B. ROSE.

FILED.
OCT 3 1889
JAMES H. McKENNEY
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

THE KEYSTONE MANGANESE AND IRON CO., Appellant,

v.

MATT. MARTIN.

ADDITIONAL BRIEF FOR APPELLANT.

The cases cited by counsel for appellee seem to us not to be in point.

In *Logan v. Washington County*, *29 Penn. St.*, *373*, the court only held that surface lands and mineral interests in the same lands might be separately assessed.

In order to understand the decision in *Caldwell v. Copeland*, *37 Id.*, *427*, cited also by counsel, it will be well to examine the previous report of the same litigation, in *Caldwell v. Fulton*, *31 Id.*, *475*; from which it will appear that the coal on one of the tracts was severed by deed from the surface land. The controversy arose between parties holding under mesne private conveyances; and the court

held that the occupant of the surface land could not by continuous occupation thereof acquire title by limitation, without showing an actual occupation of the minerals as well. The reason was plain; since the defendant, in the absence of adverse possession of the coal itself, was presumed to hold in accordance with the terms of his deed, and this holding was not inconsistent with the title of his adversary.

The case at bar is wholly different; for the appellant does not claim under any deed limiting the quantity of the estate. There is, therefore, no estoppel, and no qualified holding. The assessment ostensibly and actually covered the whole estate. As this was acquiesced in by the owner of the minerals, and the sale proceeded, there is nothing anywhere in appellant's title which will make its occupation that of a trustee for the former owner or owners of any estate therein; for there is no privity between it and them.

It is not necessary for the holder under a tax deed to produce in evidence the chain of title of those who owned the lands described in it prior to the tax sale; but if the law governing the assessment, levy and sale has been complied with, then the tax deed "becomes conclusive evidence of title in the grantee, according to *its* extent and purport."

2 Blackw. Tax Titles, sec. 845.

The purchaser does not hold under the former owners. His title is paramount.

Respectfully,

U. M. Rose.

G. B. Rose.

Office Supreme Court U. S.
FILED,
OCT 17 1889
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

THE KEYSTONE MANGANESE AND IRON COMPANY,

No. 313. vs.

MATT. MARTIN.

BRIEF FOR APPELLEE.

MITCHELL & BETTIS, LITTLE ROCK.

In the Supreme Court of the United States.

THE KEYSTONE MANGANESE AND IRON COMPANY,

No. 313. vs.

MATT. MARTIN.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The plaintiff, Matt. Martin, owned and was in possession of the N. W. ¼ of the N. W. ¼ of section 3, township 14 North, range 7 West, on the 27th day of June, 1853, and on that day sold and conveyed the same to one Thomas C. Smith, reserving the mineral therein by a clause in the deed as follows: "I, my heirs, representatives and assigns are to have, and I do hereby retain to myself and them, a perpetual and unlimited right in fee to all the stones and minerals that may be in or upon said lands, and full and unquestioned power and right to enter said lands for the purpose of digging, quarrying and mining upon said lands; with full power and right of ingress and egress

thereto and therefrom, and upon said lands to remain and erect buildings thereon, and to use such timber and other materials as may be convenient and proper for the excavation, preservation, manufacture and removal of such stones and minerals and improvements as may be connected with the working of said stones and minerals, it being well understood by the parties hereto that the right of sale and all else is hereby conveyed to said Thomas C. Smith, except the right to the stones and minerals on said lands, which, with all needful and proper rights and privileges to obtain, prepare for market and remove the same, are expressly reserved from sale."

The deed was filed for record and recorded in the office of the recorder of the county in which the land was situated, on the 5th day of December, 1853. The recording laws of this State are as follows:

"Every deed or instrument of writing conveying or affecting real estate, which may be acknowledged or proved and certified as prescribed by this Act, may, together with the certificate of acknowledgment, proof, or relinquishment of dower, be recorded by the recorder of the county where such land to be conveyed or affected thereby shall be situated."

"Every deed, bond or instrument of writing affecting the title in law or equity to any property, real or personal, within this State, which is or may be required by law to be acknowledged or proved and recorded, shall be construc-

tive notice to all persons from the time the same is filed for record in the office of the recorder of the proper county."

Digest of Statutes of 1874, Secs. 664 and 670.

Smith died and the control of the land passed to one Robert A. Childress, as administrator of his estate, and was by him assessed for taxation in the year 1874. The revenue Act in force in this State in 1874, at the time the land was assessed, contained the following provisions, which throw some light on the questions involved in this case:

Landowner to list with clerk.

SECTION 5078. "It is hereby made the duty of every person seized of or holding lands, as mentioned in this Act, to list the same for taxation with the county clerk on or before the first day of January of each year, after the same shall be subject to taxation; and in case of neglecting to list the same as aforesaid, the county clerk shall, when the same shall be thereafter listed, charge upon each tract so neglected to be listed the taxes for each year the same shall have been omitted after becoming liable to taxation, together with twenty-five per centum penalty on each of such year's taxes, in addition to the taxes of the current year."

Duties of assessor.

SEC. 5113. "Each assessor shall, at the time he is required to make his return of taxable property to the county clerk, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order, and the county clerk shall carefully preserve the same in his office for two years."

SEC. 5114. "Each assessor shall, at the time of taking

a list of personal property, also take a list of all real property situate in his county that shall have become subject to taxation since the last previous listing of property therein, with the value thereof estimated agreeably to the rules prescribed; * * * * * * and shall make return thereof to the county clerk at the same time he is required to make his return of personal property to the county clerk; he shall describe the tract or lot of real property on which each of such structures shall have been erected, the kind of structure so erected and the true value thereof; and in case of the destruction by fire, flood or otherwise of any building or structure of any kind, over one hundred dollars in value, which shall have been erected previous to the the last valuation of the land on which the same shall have stood, or the value of which shall have been added to any former valuation of such land, the assessor shall determine, as near as practicable, the value of such structure, and make return thereof to the county clerk, as in this section provided."

Rule for valuing real estate.

SEC. 5115 "Each separate parcel of real property shall be valued at its true value in money, excluding the value of crops growing thereon; but the price for which such real estate would sell at auction, or at a forced sale, shall not be taken as the criterion of such true value."

Minerals, how assessed

"*Where the fee of the soil of any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right to any minerals therein in another or others, the same shall be valued and listed agreeably to such ownership, in*

separate entries, and taxed to the parties owning the same respectively."

"SECTION 5116. Each assessor shall, on or before the third Monday of September, in the year 1876, and every fourth year thereafter, make out and deliver to the county clerk a return in tabular form, contained in a book to be furnished him by such county clerk, of the amount, description and value of the real property subject to be listed for taxation in his county, which return shall contain: Assessment of real estate

First. The names of the several persons, companies or corporations, in whose names the several tracts of real property, other than town property in each township within his district shall have been listed, and in appropriate columns, opposite each name, the description of each tract, designating the number of the section and the part thereof, and the township or survey, listed in such name, and the value of each separate tract, as determined by the assessor.

Second. * * * * * If the name of the owner of any tract of land or lot shall be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot; * * * * * with the following affidavit:

I, ———, assessor, do solemnly swear that the foregoing is correct, and that I have appraised each tract or lot of land at its true value in money. So help me, God."

"SEC. 5117. It shall be the duty of each assessor to make out, from such sources of information as shall be in his power, a correct and pertinent description of each tract and Duty of assessor to make correct list of lands assessed.

lot of real property in his county; and, when he shall deem it necessary to obtain an accurate description of any separate tract or lot in his county, he may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession; and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish a satisfactory description of such parcel of real property to such assessor, he may employ a competent surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein, and the expense of such survey shall be returned by such assessor to the county clerk, who shall add the same to the tax assessed upon such real property; and it shall be collected by the collector of the county with such tax, and, when collected, shall be paid on demand to the person to whom the same is due; and he shall in all cases, from actual view and from the best sources of information within his reach, determine as near as practicable the true value of each separate tract and lot of real property in his county, according to the rules prescribed in this act for valuing property; and he shall note in his plat-book, separately, the value of all houses, mills and other buildings, which shall be carried out as a part of the value of such tracts. He shall enter on his plat-book the number of acres of arable or plow.land, and the number of acres of wood or uncultivated land in each tract."

"SEC. 5118. For the purpose of enabling the assssor to determine the value of buildings and other improvements, he is hereby authorized to enter, with the consent of the

owner or occupant thereof, and fully to examine all buildings and structures, of whatever kind, which are not by law expressly exempted from taxation.''

''SEC. 5119. The assessor, at the time of making the assessment of real property subject to taxation, shall enter in a separate list pertinent descriptions of all burying-grounds, public school houses, houses used exclusively for public worship, and institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which such house or institution or public building is situated, and which are by law exempt from taxation, and the value thereof. If such property is held and used for other public purposes, he shall state by whom or how it is held.''

Duties of county clerk.

''SECTION 5130. The county clerk of each county shall, on or before the first day of March, 1876, and every fourth year thereafter, make out and deliver to the assessor of each county an abstract, from the books of his office, containing a description of each tract and lot of land situate in the county, with the name of the owner, if known, and the number of acres or quantity of land contained therein, as the same shall appear on his books.''

Extending back taxes.

''SEC. 5134. In all cases where any county clerk, by inadvertance or mistake, shall have in any year omitted or hereafter shall omit, to enter on the tax-book of his county any lands or lots, or parts of lots, situate in his county, subject to taxation, it shall be his duty to enter the same on

the tax-book of the next succeeding year, and to add to the taxes of the current year the simple taxes of each and every preceding year in which such lands or lots shall have so escaped taxation." *Digest of Statutes of 1874.*

The land was sold for taxes in 1876, under the assessment of 1874, above referred to, and purchased by Elisha Baxter, to whom a tax deed in due form was executed by the proper officer by the general description of the land given above. The defendant claims title under this tax deed.

ARGUMENT.

The legal questions presented by this record are:

1. Were the minerals in the land embraced in the assessment and sale?

2. If not, has the defendant acquired title by limitation?

That there may be a separate interest and ownership in the soil, and in the minerals on or under the soil, is not controverted, nor is it denied that the respective interests in the land described in the pleadings were the subject of separate ownership as alleged by the plaintiff.

That being the case, the provision of the statute requiring that they should be assessed separately, according to such ownershlp, was mandatory. The assessor had no power or authority to embrace the separate interests in one

assessment, even if he had attempted to do so. The facts, as disclosed by the record, however, show very clearly that no attempt was made to assess the plaintiff's interest. The land was listed by Robert A. Childress, the administrator of the estate of Smith, the plaintiff's vendee; he testified on that point as follows:

"I assessed this land in connection with other lands belonging to T. C. Smith's estate in the year 1874; a Mr. Daniel McElvane was the assessor. When I say I assessed the land I mean to say that I gave Mr. McElvane, as assessor, the numbers of this and other lands. I assessed this land as administrator of the estate of Thomas C. Smith. At the time I assessed the land, in 1874, I was administrator of the estate of Thomas C. Smith. The date of my mortgage, given by Thomas C. Smith, was dated in 1855, or thereabouts. At the time I took my mortgage on the land I knew the character of the title. I had in my possession the deed from Matt Martin to Thomas C. Smith. The information that I had from the deed, from Smith and from Martin, was, that Thomas C. Smith only held the agricultural interest, and I heard Smith say that he did not claim the mineral interest in the land, but only claimed the agricultural interest; the mineral interest belonged to Matt Martin. The interest of Thomas C. Smith in the land was whatever interest Matt Martin had in the agricultural interest in said land. My impression was that one George Martin had an interest—this tract of land. I never claimed any interest in the mineral in said land, either as administrator or under my mortgage, for

the reason that at that time Matt Martin owned the mineral in said land, as shown by the deed in my possession, as above referred to. At the time I assessed the land, in 1874, I don't recollect anything said about the mineral. I gave in the land just as I gave in my land, and other lands. * * * * * In giving in lands I generally gave them in as other land in the neighborhood was assessed, without regard to mineral. This land in 1874, I see from the record, was assessed at $104.00. * * * * * I do not know of any one else assessing the mineral interest in this land. I know of no assessment of the land except my own assessment." *Record, 33-4.*

The learned counsel for defendant lays emphasis on the fact that the plaintiff did not assess his interest; this may be true, and we may concede that the law contemplated he should do so. But it was made the duty of the clerk to list, and of the assessor to assess it, as well; and the statute clothed the assessor with ample power to enable him to perform that duty; it likewise required the County clerk, who was ex-officio recorder, to make out lists of all lands subject to taxation from the records of his office and furnish them to the assessor.

The statute further provided against the loss of revenue, by the omission of property subject to taxation from the assessment lists, by making it the duty of the clerk to enter the same on the lists and extend the back taxes against them.

It was the duty of the clerk and assessor to list, and

assess separately, according to ownership, the several interests in the land; the deed making the severance in the ownership of the mineral was recorded in the office of the clerk. The failure on the part of the plaintiff was not, as was said by the Court below in the opinion in this case, equivalent to a listing or assessment, nor did it dispense with the provision of the statute requiring the interests to be assessed separately.

The question as to the proper mode of assessment when there is a divided ownership, as in this case, arose in respect to coal lands, and was decided without reference to any statutory provision, by the Supreme Court of Pennsylvania, in the case of Logan v. Washington county, reported in *29 Pa., St. 373*.

Levi Bentley owned seventy-five acres of land and Logan owned the coal therein. The question was whether the mineral should be assessed separately to Logan. The opinion of the Court on that point was as follows: "The taxing officers of Washington county have decided that, where the owner of coal land has sold out the right to take all the coal that is in his land, and retained the land itself, the owner of the land and the owner of the coal are each taxable according to their several interests, and we are not able to say that this is wrong. The question seems to us a very reasonable one. The assessors are required to value for taxation all real estate according to its selling value," (see our statute above copied, Sec. 5115.) "and this, of course, is measured by all the circumstances and advantages that tend to enhance its price, of which coal is a most important item. The

coal is therefore necessarily included in the valuation, if it is accessible, and some person must pay the tax upon it. The only question is, shall it be paid by the owner of the coal, or by one who does not own it? To this there can be but one answer. There is a divided ownership of the land, and there ought to be a divided taxation. The case is not at all singular in its principle. Where one man owns land, and another a rent issuing out of it, both are separately taxable according to their interests. So it is where the privilege of wharf or ferry, or fishery belongs to one and the land to another. These cases are expressly mentioned in the tax law, and they do not exclude other cases involving the same principle, but rather include them.''

It is contended by counsel in argument that the existence of mineral in the land was not known. I think counsel is mistaken as to the fact. The deed itself is evidence to the contrary, and Childress, the administrator, and the party who listed the land, testified: ''The information that I had from the deed, from Smith and from Martin, was that Thomas C. Smith only held the agricultural interest, and I heard Smith say *that he did not claim the mineral interest in the land*, but only the agricultural interest. *The mineral interest belonged to Matt Martin.*'' *(Record 33.)*

Case testifies that he purchased the mineral from Polk Southard in 1881. *(Record 35.)*

However the facts may be, neither the exploration, or the mining of the minerals on the land was essential to the

severance of the ownership. The existence of minerals and the separate ownership thereof was all that the law required. The cases cited below establish this proposition. Moreover, if the contention is true it proves that the mineral was not included in the assessment.

It is true, as contended by the learned counsel, that under our laws the name of the owner need not appear on the assessment, and that the use of a wrong name will not invalidate the assessment; but that rule does not have the effect to enlarge the scope of the assessment, or to extend the description to separate property not properly included in it under the statute. It could no more have the effect of including the mineral, in case of a separate ownership, than it would to include an interest in a tract of land separated by perpendicular lines from the tract described. Counsel says the land was described according to the public surveys, without qualification, and "extended from the center of the earth to the stars, and beyond." Had the land been assessed, *minus the minerals*, then, he says, the ruling of the Court below would have been correct. Fortunately there are many decisions that throw light on that question, some of which will be cited in this brief. The rule is that the possession of the surface, or the description of the tract by metes and bounds or according to the public surveys of the country, are not treated as inconsistent with the separate ownership of the minerals, or as casting a cloud on the title of the owner of the minerals.

2nd. The Circuit Court found that there was not seven years possession of the surface and no possession at all of

the mineral interest; that the plea of two years limitation, applicable to tax sales, failed as to the mineral because the proof failed to show the requisite possession; and further held that this statute did not apply, because there was never any assessment or sale of the mine for taxes.

First. In regard to the proof of possession. Frank P. Southard purchased the land from Baxter, who held the tax deed, in December, 1878, and in January, 1879, contracted to sell it to his brother, Polk D. Southard, who moved on it the 12th of March, 1879. (See testimony of the two Southards, 28-30.

This is the earliest period at which any one is shown to have been in possession of the surface. This action was begun in January, 1886, and within less than the statutory period.

There is no evidence that the defendant's predecessors in title were ever in continuous possession of the minerals, or worked the mine beyond an occasional trespass, as shown by Case, who says he got some ore out of the land in 1881 (*Record, p. 35*), and Polk Southard, who testified that he moved off of the land the 1st of March, 1884, and as long as he held it he used it for agricultural purposes. (*Record. p. 30.*) He states further that he mined some on the land for one Woodward (who seems to have been a stranger to the title) in 1882 or 1883; that the plaintiff called his attention to it in 1884 and threatened to sue him; that he had stopped mining some months prior to the meeting with plaintiff.

Case also testified that Polk Southard mined on this tract for Woodward (*Record, p. 35*), evidently referring to the same mining that Southard testified in regard to.

This is all the evidence on the subject, and does not establish any continuous working of the mines, or, indeed, any work whatever since that claimed to have been done by Polk Southard in 1882 or 1883, save the trespasses alleged to have been committed by the defendant in the latter part of 1885.

Second. The statute of two years, pleaded by the defendant, applies exclusively to lands assessed and sold for the non-payment of taxes and held under a tax deed. If the mineral interest in the land was embraced in the assessment and sale, that proceeding transferred the title to the purchaser, and the defendant does not need the protection of the statute; but if, as I contend, the interest of the plaintiff was not covered by the assessment, then that interest is not and was never held by the defendant and those under whom he claims "by virtue of a purchase thereof for the non-payment of taxes."

Third. The possession of the soil under the tax deed was not adverse, because it was not inconsistent with the plaintiff's right to the mineral.

This doctrine was very clearly announced by the Supreme Court of Pennsylvania, in the case of *Caldwell* v. *Copeland, 37 Pa. St. 427.* The court held that after a severance, whether by deed or reservation or grant, the possession of the surface ceased to be the possession of the mineral.

And again in the case of *Armstrong* v. *Caldwell*, 53 *Ibid.*, the Court announced the rule in the following language:

"It is, no doubt, the general presumption that a party who has possession of the surface of the land, has possession of the sub-soil also, because, ordinarily, the right to the surface is not severed from the right to the strata below the surface. But, this presumption does not exist when these rights are severed. Each then becomes a distinct possession. In such a case, the possession of the surface, following the right, is as distinct from the possession of the minerals or sub-soil strata, which have been severed in right, as is the possession of one tract of land from that of another in contact with it. Hence it is settled that when by a conveyance or reservation, a separation has been made of the ownership of the surface from that of the underground minerals, the owner of the former can acquire no title by the statute of limitations to the minerals, by his exclusive and continued enjoyment of the surface. Nor does the owner of the mineral lose his right or his possession by any length of non-user?"

On this subject Lord Mansfield says, in order to create an adverse possession it must not be a possession consistent with the claim of the party sought to be barred. Thus, he says, the possession of a lessee, of a joint tenant, or of a tenant is common, shall not bar because it is consistent with the claimant's title. (*Hodgkinson v. Fletcher, 3 Douglas 31, 26 English Common Law, Reports 32.*) And he applied the doctrine thus asserted and illustrated to the case of a separate

ownership of the surface and the sub soil, holding that the possession of the surface was not inconsistent with the right of the owner of the minerals, and hence not adverse.

In this connection counsel contends that admitting, for the sake of argument, that the *assessment was irregular*, yet the tax deed gave color of title under which the statute would run; and in support of this proposition cites a number of cases from this State, all of which have held and applied the doctrine that a tax deed based upon defective proceedings in the assessment, sale, etc., gives color of title and puts the statute in motion *as to the property embraced in the tax proceeding;* but none of the cases cited, nor any other case in the lids of the books have ever held that a tax deed gave color of title to land not embraced in the assessment and sale. In truth the argument is but an attempt to divert attention from the point involved. We do not contend that there was any irregularity in the assessment. It was, so far as we know, valid in every respect and binding as to the subject matter of the assessment.

Respectfully,

J. M. MOORE,

For Appellee.

Supreme Court U. S.
FILED.
OCT 23 1889

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 51.

THE KEYSTONE MANGANESE AND IRON COMPANY, APPELLANT,

versus

MATT. MARTIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLEE.

G. N. TILLMAN,
Counsel.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1889.

THE KEYSTONE MANGANESE AND IRON COMPANY, APPELLANT,

versus

MATT. MARTIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

The statement of the case made by appellant's counsel in their brief is not controverted except in so far as the same is qualified by the statement of the case in the brief of my associate counsel (J. M. Moore, Esq.) for appellee, and also by the following facts:

Frank P. Southard testifies (Record, page 28, beginning four lines from bottom of page) that what he means by taking possession of the land is that he cut some timber off the land and offered the land for sale. How much timber he cut, whether one or two trees or more, does not appear. He did not settle upon the land, nor did he take any ore

from it; that his brother moved into a house upon the land in March, 1879. (Record, 28, line 15 from top of page.)

The only ore taken from the land was taken by—

1st. Robert R. Case.

2d. Polk D. Southard.

As to the 1st, the only evidence is that of Case (Record, page 35, beginning sixth line from bottom), in the following language:

"When I say I took possession of the mineral in this land after my purchase I mean that I uncovered *some* ore on the land, and also got out *some* ore from the land. This was in the year 1881, some time after my deed from Polk Southard."

As to the 2d, the evidence is that of Frank P. Southard, who says that the mining he speaks of was done by his brother (Polk D.) for one Woodward (Record, 29, beginning at the 6th line from top). Then Polk D. Southard's testimony as to the taking of ore relates to the same trespass and no other (Record, page 30, beginning at line 18 from top of page, and Record, page 31, beginning at line 10 from the top); and he further says that when Martin, learning of his act, told him he had committed a trespass, he made no claim of right, but expressed his regret (Record, page 31, line 21 from top), and that he had already stopped. (Record, page 31, line 5 from bottom.)

Now, the questions are:

1. Was the assessment, a copy of which is set forth on page 27 of record, an assessment of the freehold estate in the minerals held by Matt. Martin?

2. Is Matt. Martin's claim barred by any statute of limitations?

3. Upon the facts will a court of equity take jurisdiction and grant relief?

BRIEF OF THE ARGUMENT.

Prior to the 27th day of June, 1853, Matt. Martin (appellee) was the owner of the entire estate in the land in controversy. On that day he conveyed the land by deed to Thos. C. Smith, "subject only to this condition: that I, my heirs, representatives, and assigns, are to have, and I do hereby retain to myself and them, a perpetual and unlimited right in fee to all the stones and minerals that may be in or upon said lands, and full and unquestioned power and right to enter said lands for the purpose of digging, quarrying, and mining upon said lands, with full power and right of ingress and egress thereto and therefrom, and upon said lands to remain and erect buildings thereon, and to use such timber and other materials as may be convenient and proper for the excavation, preservation, manufacture, and removal of such stones and minerals and improvements as may be connected with the working of said stones and minerals, it being well understood by the parties hereto that the right of sale and all else is hereby conveyed to said Thomas C. Smith, except to the right to the stones and minerals on said lands, which, with all needful and proper rights and privileges to obtain, prepare for market, and remove the same, are expressly reserved from sale." (Record, page 37.)

Such being the state of the title—Thos. C. Smith's heirs having the fee of the soil, and the right to the mineral therein being in Matt. Martin—the land was in 1874 assessed as belonging to R. A. Childress, administrator of

Thos. C. Smith, in the following manner on the assessment list (Record, page 27):

List of Real Property Assessed for Taxation in Independence County, Ark., for 1874.

Owner's name.	Parts of section.	Section.	Township.	Range.	No. of acres.	Valuation.	State.
							For paying interest on public debt.
Childress, A. R., adm'r.	N. W. N. W.	3	14	7	51.94	$104 00	9

Filed May 31, 1886.

RALPH L. GOODRICH, *Clerk.*

Under this assessment sale was made of the land and deed made to the purchaser describing the land as described in the said assessment, and the appellant derives title from the purchaser at the tax sale made under said assessment.

Now the question is: Was that assessment an assessment of the right of Matt. Martin to the mineral therein?

The statute of Arkansas provides—

"Where the fee of the soil of any tract, parcel, or lot of land is in any person or persons, natural or artificial, and the right to any mineral therein in another or others, the same shall be valued and listed agreeably to such ownership, in separate entries, and taxed to the parties owning the same respectively."

Dig. Ark. St. 1874, sec. 5715.

This provision of the law was made for the protection of the owners of mineral interests in land. It is clearly equivalent to saying that a mere assessment of land as such in

the ordinary way, by section or half or quarter section, shall not be an assessment of the minerals therein, if the minerals are owned by one person and the land by another.

In order that there may be an assessment of the right to the mineral "where," in the language of the statute, "the fee of the soil of any tract, parcel, or lot of land is in any person or persons, natural or artificial, and the right to the mineral interest in another or others," it is necessary that the mineral interest be assessed *eo nomine*. It is not a case of an irregular or invalid assessment, but of no assessment at all.

In the case of Adams and others *vs.* Briggs Iron Co., 7 Cush., 366, the supreme court of Massachusetts says:

"We suppose it well settled that there may be a separate estate in mines and ores distinct from the *land* in which they are found. *Prima facie* the owner of *land* is entitled to all the minerals as part of the fee; but this presumption may be rebutted by evidence showing a severance of the mines and a distinct estate and interest in them by grant or reservation—that is, the owner of the fee, having the general power of disposal, may grant all the ore and minerals and still remain general owner of the *land*, or he may grant the *land* and reserve the minerals."

And in the case of Green *vs.* Putnam, 8 Cush., 24, it was held that, the reservation of a quarry of stone *being of record in the books of the proprietary*, a subsequent grantee of the entire fee got no title to the stone under the land.

The only reasonable construction of the Arkansas statute is that it was intended to recognize *land* as such as one subject of assessment, and the mineral interest in the same, where it had been severed by grant or reservation, as another and distinct subject of assessment, and that the assessment of the former should not be considered as including the

latter. The presumption that the land as assessed includes all the minerals as part of the fee is rebutted by the fact that the mineral interest had been severed by reservation and the deed containing the reservation was of record in the register's office. This record was notice to the assessor and to the purchaser at the tax sale, and the assessment and sale and deed are all to be viewed in the light of this fact; their nature, scope, and effect limited by this fact.

A tax assessor is not authorized to assess and advertise lands for sale as the property of an unknown person when it appears that he could with ordinary diligence have ascertained who the real owner was, and a sale made under such assessment is void.

Rapp *vs.* Lowry, 30 La., 1272.
Oliver *vs.* Robinson, 58 Ala., 46.

It is true it has been decided by the supreme court of Arkansas, in Worthen *et al. vs.* Ratcliffe *et al.*, 42 Ark., page 343, and in other cases, that an assessment of a tract of land is not invalid by reason of its being assessed in any other name than that of the rightful owner, "provided such land or lot be in other respects *sufficiently described on the tax book*, and the *taxes for which the same is sold* be due and unpaid at the time of such sale."

Now, it is argued by the appellant's counsel that, inasmuch as the description on the assessment list in this case does presumably include all from the center of the earth to the stars, the description is sufficient, and the assessment must be considered as an assessment of the entire interest in the land, and therefore valid. This would make sec. 5115 of the Digest Ark. St. 1874 merely directory, to be observed or disregarded at the pleasure of the assessor.

"Where the fee of the soil of any tract of land is in any person or persons, natural or artificial, and the right to any mineral therein in another or others, *the same shall be valued and listed*, agreeably to such ownership, in separate entries, and taxed to the parties owning the same respectively."

By this section the other section, 5215, which says that it makes no difference in whose name land is assessed, is qualified and limited. Placing the two sections together, it is equivalent to saying "if a tract of land is sufficiently described it is a valid assessment, no matter whether assessed to the owner or not," with the following exception: where one person owns the fee in the soil and the other the mineral interest, the assessment shall be separate and to the respective owners. This is a mandatory provision, a disregard of which, in the language of the supreme court of Arkansas, "tends to prejudice the rights and interests of the land-owner. Thus said section 5215, Dig. Ark. Stat. 1874, quoted on page 10 of brief for appellant, and again urged on page 14 of said brief with citation of authorities, is made to harmonize with section 5115.

"SEC. 5215. No sale of any land or lot for delinquent taxes shall be considered invalid on account of its having been charged on the tax book in any other name than that of the rightful owner: *Provided*, That such land or lot be *in other respects sufficiently described on the tax book*, and the *taxes* for which the *same* is sold be due and unpaid at the time of such sale."

That the sale for taxes may be valid the land must be *sufficiently described on the tax book*. A mineral interest in land is an estate of a peculiar character; it is *sui generis*, and sec. 5115 says it shall be listed or described separately—*described* as such—for to say it shall *be listed* in a separate entry

is equivalent to saying it shall be described *eo nomine* in a separate entry. To list for taxes is nothing more nor less than to enter a *description* of the thing to be taxed upon the assessment-roll.

The other condition of a valid sale for taxes mentioned in sec. 5215 is that the *tax* for which the estate is sold shall be ascertained and *due* and *unpaid*.

These two conditions being complied with, there being a "*sufficient*" description and the *tax on the particular land or estate in land* being fixed and due, the sale shall be valid, notwithstanding the same is listed or assessed to some other person than the rightful owner.

Neither of said conditions were complied with. "Sufficiently described" means described according to the mandatory requirements of the said revenue act. That is not a sufficient description which disregards sec. 5115. This section commands the mineral interest in the land, where it has been severed by grant or reservation, to be listed or described and valued in a separate entry. A description of land by metes and bounds is a sufficient description in a *deed* to convey all beneath and above the surface, and such a description in an *assessment* may have been considered sufficient and of equal scope but for the mandatory provision of the statute, which says in effect it shall *not* be sufficient; it shall not have such scope.

Neither was the other condition, requiring the *tax on the same* to be due and unpaid, complied with.

Suppose Martin had been present at the sale and had said: "I do not want my estate in said land sold or any cloud put upon my title by a sale under said assessment. Inform me what tax on my estate is due and unpaid and I will pay it."

The reply would have been there is no sum certain which can be said to be due and unpaid on your estate. The estate of Smith's heirs and your estate are assessed in a lump, and you must pay the whole tax—the tax you do not owe as well as that you do owe—without knowing how much is chargeable to them and how much to you; otherwise the sale as *per* the assessment will be made.

French *vs.* Edwards, 13 Wallace, 506, cited in Lyon *vs.* Alley, 130 U. S., 184, lays down the rule with reference to mandatory and directory provisions of tax laws in the following language:

"There are undoubtedly many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such generally are regulations designed to secure order, system, and dispatch in proceedings, and by a disregard of which *the rights of parties interested cannot be injuriously affected.* Provisions of this character are not usually regarded as mandatory unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated. *But when the requisitions required are intended for the protection of the citizen, and to prevent a sacrifice of his property,* and by a disregard of which his rights *might be* and *generally would be* injuriously affected they are not directory, but mandatory. They must be followed or the acts done will be invalid."

We insist that the court below was correct in holding that there was not any assessment of the estate in the minerals, as required by the law, and no valid sale of the same for taxes.

STATUTES OF LIMITATION.

"SEC. 5217. All actions to test the *validity* of any proceeding in the appraisement, assessment, or levying of taxes

upon any land or lot or part thereof, and all proceedings whereby is sought to be shown any *irregularity* of any officer or defect or neglect thereof having any duty to perform under the provisions of this act in the assessment, appraisement, or levying of taxes, or proceedings whereby it is sought to avoid any *sale under* the provisions of this act for irregularity or neglect of any kind by any officer having any duty or thing to perform under the provisions of this act shall be commenced within two years from the *date of sale* and not afterwards."

With regard to this statute of limitations it is decided in the case of Radcliffe *et al. vs.* Scruggs, 46 Ark., page 104–107, that "it does not operate to deprive the former owner of any *meritorious defense;* and by meritorious defense we mean any act or omission of the revenue officers in *violation of law and prejudicial to his rights and interests,* as well as those jurisdictional and fundamental defects which affect the power to levy the tax or to sell for its non-payment.

"But while the act cannot have the free course its framers intended, it is still our duty to give it such effect as may be consistent with legal and *constitutional principles,* and this may be best accomplished by restricting its operation to mere *irregularities* or *informalities* on the part of officers having some duty to perform in relation to the assessment, levy of taxes, or sale. Our legislation and previous decisions have always distinguished between this class of defects, *which have no tendency to injuriously affect the tax-payer,* and substantial defects, such as go to the jurisdiction of the levying court to levy a particular tax, or the power of the officer to sell for non-payment, *or the omission of any legal duty which is calculated to prejudice the land-owner.*

"All *technical* objections to the sale not actually prejudicial to the former owner must be brought forward within two

years under penalty of not being afterwards regarded when the tax title is assailed."

It was held in that case that the failure to swear to the assessment and delinquent lists was not an omission of such substantial character, being "intended to protect the interests of the State rather than the tax-payer."

It was said in that case that this construction was the only one consistent with Constitutional principles. An act which should provide that the holding of an invalid deed unaccompanied by adverse possession should, after the lapse of two years, deprive the true owner of his land, it is too clear for argument, would be in violation of both the Federal and State constitutions. Such a transfer of one man's property to another would not be "by due process of law" even in a tax proceeding. If the tax proceeding is invalid and ineffectual to convey a good title, adverse possession would be necessary to affect the true owner with notice.

The right to notice at some stage in the tax proceedings is a constitutional right. It may be no other notice than that which the tax law itself gives to all citizens, and the citizen has the right to assume that the *mandatory* provisions of the law will be complied with. The law so notifies him. If they are not obeyed, and his property is conveyed to another by a void deed, notice by adverse possession is absolutely necessary to put the statute of limitations in operation.

"Whatever the character of the proceeding by which one is deprived of his property, whether judicial or administrative, and whether it takes the property directly or creates a charge or liability which may be the basis of taking it, the law directing the proceeding must provide for some kind of notice or offer the owner an opportunity to be heard or the

proceeding will want the essential ingredient of due process of law."

County San Mateo *vs.* Sou. Pac. R. R. Co., 13 Fed. Rep., 722.

Santa Clara Co. *vs.* Sou. Pac. R. R. Co., 18 Fed. Rep., 385.

"To give a possession the requisite characteristics of being visible, notorious, distinct, and definite in its extent the ouster, in the first place, must be of such notoriety that the owner may be presumed to have notice of it and its extent, and it must be of a continuous character."

Such is the rule laid down by any good text-book and the adjudged cases. An occasional trespass will not be sufficient. In this case there were but two takings of ore from the land—one by Polk Southard and one by Case, the one taking not having any connection with the other.

Robert R. Case says (Record, page 35):

"I uncovered *some* ore on the land, and also got out *some* ore from the land."

When? How much? How long was he engaged in doing it—one week, one day, or one hour? Did he get out a wagon-load for sale or a bushel for specimens? Of course, it is unnecessary to argue that this testimony does not establish adverse possession for seven years or two years or for any length of time.

With regard to the digging of ore by Polk D. Southard, F. D. Southard speaks of it in his examination-in-chief (page 28 of Record), and in his cross-examination (page 29) says:

"The mining spoken of above, the work was done by my brother."

Then his brother, Polk D. Southard, is introduced, and (on page 30) says:

"I done *some* mining on the land. I worked under Mr. Woodward, who, *I understood*, worked under a lease from Case, Lapham and Einstein."

And on cross-examination (p. 31) states further:

"The mining that I done on the land was after I had sold the mineral right to Case, Lapham and Einstein. No mineral had been taken off this land prior to my digging for it, as above stated."

This digging was not done under any claim of right on his part; but, as he says, was done at the instance of some man by the name of Woodward, who, so far as the record discloses, never had any claim of title nor pretended to have. The witness, it is true, says he "*understood*" that Woodward had a lease from Case, Lapham and Einstein; but there is no evidence to show any such lease, or that Woodward in any way represented Case, Lapham and Einstein. This taking of the ore by Polk D. Southard was a mere trespass by strangers to the title. Polk D. Southard testifies (p. 31) that Martin told him he had trespassed on his mineral, and that he must stop, and the witness adds: "*I had already stopped.*"

In view of the character of these two disconnected takings of ore, the court below was certainly right in holding that "there was no possession at all of the mine."

As to the general statute of limitations of seven years, the evidence clearly shows (p. 28) that Polk D. Southard went into possession of the land in March, 1879, less than seven years prior to the filing of this bill. But even if it were otherwise—

" As a consequence of this double ownership of the surface and mines below, no mine-owner is affected by any acts of possession for gaining adverse title done upon the surface."
Washburn on Real Property, vol. 2, sec. 62, page 400, and cases there cited.

The only remaining question is the one raised in the concluding sentence of the brief for appellant:

Is this a proper case for a bill in equity, or is he remitted to actions of trespass at law, or of ejectment?

That it has been the practice of courts of equity to grant injunctions against trespass upon mines, and to allow suits for mesne profits, if it appears from the peculiar character of the property, coupled with the general circumstances of the case, that the remedy would be impracticable at law, is established by the following authorities: Adam's Equity, 247, where several English cases are cited, and for other cases see supplement to this brief.

G. N. TILLMAN,
For Appellee.

Office Supreme Court U. S.
FILED.
OCT 26 1889
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 51.

THE KEYSTONE MANGANESE AND IRON COMPANY, APPELLANT,

versus

MATT. MARTIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

SUPPLEMENTAL BRIEF FOR APPELLEE.

Merrick *vs.* Hutt, 15 Ark., 343;
Biscoe *vs.* Coulter, 18 Ark., 440;
Craig *vs.* Flanagin, 21 Ark., 322;

are cited on page 13 of the brief for appellant as sustaining this proposition: "By the laws of Arkansas a tax sale of land cuts off all claims of every kind, and is good against all the world."

These cases simply decide that where the assessment is valid and the sale in accordance with law the interests of

all persons in the land pass by the sale, and they decide that to be a valid assessment which is in compliance with the substantial requirements of the law, although the land may be charged on the assessment list to some other person than the rightful owner.

But in the language of the leading case, Merrick *vs.* Hutt, followed by the others, the tax deed is "*subject to be overthrown by proof of non-compliance with the substantial requisites of the law.*"

Worthen *vs.* Ratcliffe, 42 Ark., 343, is to the same effect; that it is not essential to the validity of an assessment that the land should be listed in the name of the rightful owner, *because the law does not require it to be so listed.* It is not a *substantial requisite* of the law. The statute goes further and says an assessment in the name of the owner shall *not* be required in order to make the sale valid.

The following proposition, on page 16 of brief for appellant: "And so whenever no correction is applied for or made the *character* of the lands becomes fixed as against all the world," in order to restrict it to exactly what has been determined by the supreme court of Arkansas should read "*the character of the lands as belonging to residents or non-residents*" becomes fixed, &c., it having been decided merely that when the lands have been placed in the assessment proceedings, some upon the non-resident list, others upon the resident list, their character in that particular becomes fixed, and the forfeiture proceedings must conform to the law governing the list on which the lands are listed, and the fact that the lands were by mistake put upon the wrong list would not invalidate the proceedings.

Worthen *vs.* Ratcliffe, 42 Ark., 343.
Kensworthy *vs.* Mitchell, 21 Ark., 153.
Garabaldi *vs.* Jenkins, 27 Ark., 456.
Gosset *vs.* Kent, 19 Ark., 608.

RELIEF IN EQUITY.

Where the title to mining property is in controversy an injunction may be granted to preserve the property pending litigation to try the right—the exception resting upon the peculiar nature of the property.

High on Injunctions, Vol. 1, secs. 329 and 730.
Hess *vs.* Winder, 34 Cal., 270.
McLaughlin *vs.* Kelly, 22 Cal., 212.

The legal title being established in complainant he is entitled to an injunction, *even though an action at law would lie.*

Merced M. Co. *vs.* Fremont, 7 Cal., 317.
Lockwood *vs.* Lansford, 56 Mo., 68.
Anderson *vs.* Harvey, 10 Grat. (Virginia), 386.
United States *vs.* Parrott, McAl. C. C., 271.

The mere fact that the defendant disputes complainant's title does not destroy the right to an injunction where the trespass complained of is destructive of the property, as in this case.

United States *vs.* Parrott, McAl. C. C., 271.
3 Daniels Ch. P., 1854.
United States *vs.* Gear, 3 Howard, 120.
"Leading Cases on Mines, Minerals, and Mining Water Rights," by Blanchard & Weeks, page 645, where numerous English and American cases are cited.

The Court having jurisdiction of the cause for one purpose will retain it to give general and complete relief; to this end will order an account and give a decree for damages, thereby preventing a multiplicity of suits.

High on Injunctions, Vol. 1, sec. 669.

It is not necessary that the complainant's title should be first established at law or that any action should be pend-

ing where the trespass is destructive of the inheritance and threatens to be continued.

High on Injunctions, Vol. 1, secs. 716, 733.
Clark *vs.* Jeffersonville R. R. Co., 44 Ind., 248.
Burnley *vs.* Cook, 13 Tex., 586.
Hart *vs.* Mayor of Albany, 9 Wend., 570.
Tribune Association *vs.* The Sun, 7 Hun., 175.

G. N. TILLMAN, *Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

THE KEYSTONE MANGANESE & IRON COMPANY

vs.

MATT MARTIN

EXHIBIT "A." Referred to in the Bill of Complaint in said Cause.

Deed. Matt Martin to Thos. C. Smith.

Know all men by these presents that I, Matt Martin, for and in consideration of two thousand dollars, to me in hand paid by Thomas C. Smith, have granted, bargained, and sold, and do hereby grant, bargain, and sell, unto said Thomas C. Smith and his heirs the following parcels of land in Independence county, Arkansas, and described in the United States surveys as the north half of the southwest quarter of section two; the northeast quarter of the northwest fractional quarter of section two; the northwest quarter of the northwest fractional quarter of section three, and lot number one of the northwest fractional quarter of section two, and the north half of the southeast quarter of section three, all in township fourteen north, of range seven west, containing in the aggregate three hundred and forty-five acres and twenty-two hundredths of an acre; to have and to hold the said lands, with the improvements and rights thereto appertaining, to the said Thomas C. Smith and his heirs forever, subject only to this condition: that I, my heirs, representatives, and assigns, are to have, and I do hereby retain to myself and them, a perpetual and unlimited right in fee to all the stones and minerals that may be in or upon said lands, and full and unquestioned power and right to enter said lands for the purpose of digging, quarrying, and mining upon said lands, with full power and right of ingress and egress thereto and therefrom, and upon said lands to remain and erect buildings thereon, and to use such timber and other materials as may be convenient and proper for the excavation, preservation, manufacture, and removal of such stones and minerals and improvements as may be connected with the working of said stones and minerals, it being well understood by the parties hereto that the right of sale and all else is hereby conveyed to said Thomas C. Smith, except to the right to the stones and minerals on said lands, which, with all needful and proper rights and privileges to obtain, prepare for market, and remove the same, are expressly reserved from sale.

And in testimony whereof I, the said Matt Martin, hereto sign

my name and affix my seal, at Batesville, Arkansas, this twenty-seventh day of June, 1853.

MATT MARTIN. [SEAL.]

Witness:
H. F. ARCHER.
GEORGE CASE.

STATE OF ARKANSAS, *County of Independence,* } ss:

Before me, Jesse Searcy, a justice of the peace of the county of Independence and State of Arkansas, on the 27th day of June, 1853, appeared Mathew Martin, known to me *and* to be the grantor in the foregoing deed, and he stated that he had executed the same for the consideration and purposes therein mentioned and set forth, which I certify.

Given under my hand the day and date above written.

JESSE SEARCY, *J. P.*

The foregoing instrument of writing was filed for record in my office on the 5th day of December, A. D. 1853.

WM. R. MILLER,
Clerk and ex Officio Recorder.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate is a true, correct, and compared copy of the original remaining of record in my office of the deed exhibited with the bill as Exhibit A in the above-entitled cause.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this seventh day of March, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth.

Attest: RALPH L. GOODRICH, *Clerk.*

It is hereby agreed that the foregoing is a copy of the deed exhibited with the bill of complaint in said cause and introduced in evidence at the hearing thereof, and erroneously omitted from the transcript by the clerk of the circuit court; and we hereby stipulate

and agree that the record in said cause may be amended by filing therein the foregoing copy of said deed.

Feb. 26, 1889.

U. M. ROSE,
For Appellant.

J. M. MOORE,
For Appellee.

[Endorsed:] Sup. Court U. S. 1888, Oct. term. No. 313. The Keystone Manganese & Iron Co., app't, *vs.* Matt Martin. Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Mar. 12, 1889. James H. McKenney, clerk.